

# Argyll and Bute Council

## Review of the commissioning process undertaken on behalf of the Argyll and Bute Alcohol and Drug Partnership

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# Contents

<b>Summary findings</b> .....	<b>4</b>
<b>Scope of the audit</b> .....	<b>6</b>
<b>Background</b> .....	<b>8</b>
<b>Audit findings</b> .....	<b>9</b>
Compliance with legislation .....	9
Conflicts of interest.....	13
Service Impact .....	14
Governance issues.....	16
<b>Findings of the internal review</b> .....	<b>18</b>
<b>Actions taken in response to audit findings</b> .....	<b>20</b>
<b>Other recommendations</b> .....	<b>20</b>

# Summary findings

- Argyll and Bute Council undertook a commissioning process for community based addiction recovery services in 2014 on behalf of the Argyll and Bute Alcohol and Drug Partnership (ADP). In November 2014 the contract was awarded to Addaction Scotland with a start date of 1 January 2015. It is acknowledged that this lead time was too short.
- The invitation to tender (ITT) for the contract required provision of a range of services. Two potential bidders have told us that they did not submit bids for the contract because of the onerous nature of the housing support services that they believed were required within the fixed price for the contract.
- The invitation to tender required that a full review of services was to take place and that a more equitable service was required across all areas of the council by year 3. The council state that the review of services was to take place immediately after the contract commencement; however correspondents believed that this was to take place later, by year 3 of the contract. Immediately following commencement of the contract, Addaction Scotland carried out an assessment of the needs of all known service users and concluded that no service users required housing support services at this time. The ADP/council agreed that Addaction Scotland could move towards its model of more equitable services in year 1.
- In our opinion, there was a degree of ambiguity in the ITT regarding the timescale of the service review. The immediate review of services and the non-supply of housing services at this time could be considered material to the contract. We therefore recommended that the council take external legal advice to satisfy itself that the contract is compliant with public procurement legislation.
- The council obtained external legal advice which includes the conclusion, "In our view it was not unreasonable for the Council to assess the potential benefits of that acceleration in terms of best value and the needs of the service users, as against the potential risk of a procurement law breach, which seems to us to be a risk within reasonable parameters". We note the conclusions of the legal adviser and in these circumstances feel it is reasonable for the council to conclude that the contract with Addaction Scotland remains valid.
- The council also highlighted that potential bidders who required clarification on the ITT could have submitted questions through the Public Contracts Scotland portal or contacted Business Gateway for support.
- Addaction Scotland was not registered with the Care Inspectorate to provide regulated services in Argyll and Bute until 25 February 2015. It was, therefore, in breach of the contract requirements from 1 January to 25 February 2015. The ADP/council was aware of this, considered it to be a technical breach and had arrangements in place to cover regulated services during this period.

- Minutes of the Executive Group report that 56 service users transferred to Addaction Scotland and that there have been 34 new referrals since Addaction Scotland have taken on the service, which indicates that service users are accessing services. Addaction Scotland's services provided in other areas of Scotland are rated as very good by the Care Inspectorate. Arrangements for reporting on the quality of the services provided by Addaction Scotland, to the ADP and council, was formalised at the ADP Executive Group in April 2015.
- No conflicts of interest have been identified in the commissioning process. Interested parties made appropriate declarations timeously and there is no evidence that they had access to commercially sensitive information in advance of the tender.
- Governance arrangements for the ADP need to be improved including procedures for preparation, approval and custody of ADP minutes.
- In response to our findings as part of this review the council has taken some actions which are recorded on page 20. We have also made some other recommendations which are relevant for this contract and more widely for council procurement exercises. It has been agreed that this report will be considered by the ADP Executive Group, the CPP (Community Planning Partnership) Management Committee and the council's Audit Committee. A formal response to this report should be recorded.

# Scope of the audit

1. Argyll and Bute Council undertook a commissioning process for community based addiction recovery services in 2014 on behalf of the Argyll and Bute Alcohol and Drug Partnership (ADP). Four organisations submitted bids for the services. On 4 November 2014 the contract was awarded to Addaction Scotland with a start date of 1 January 2015. Prior to this, a range of services had been provided by five smaller local third sector service providers. Due to the profile of this commissioning process in the local community and receipt of correspondence from members of the public and local MSPs, the Controller of Audit determined in January 2015 that the local Argyll and Bute Council audit team should carry out a specific piece of work relating to this process.
2. Following concerns expressed in relation to the procurement of the contract, Argyll and Bute Council's Chief Executive commissioned an internal review of the commissioning process. After considering the results of the investigation, the council's view is that the contract remains valid and appropriate.
3. The report on the internal review (paras 61-63) and a timeline of the commissioning process was provided to our review team. This information was reviewed prior to conducting meetings with senior council staff including those involved in the procurement process, the former and current Chairs of the ADP and the council's Legal Manager. Discussions/correspondence was entered into with the Care Inspectorate and third sector organisations. Correspondence and reports relating to the ADP, including a complaints investigation by the Chair of the Scottish Legal Complaints Commission (SLCC), Bill Brackenridge, (para 57) were also reviewed.
4. No correspondence has been received by Audit Scotland from ADP service users or the organisations who submitted unsuccessful bids for the contract.
5. This was a targeted piece of audit work. We considered the evidence we received from all parties. Audit Scotland cannot overturn any decisions already made by the ADP/council. We make recommendations for improvement and then monitor progress in implementing these. We have prepared this report for the council who commissioned the contract but we recommend that the ADP Executive Committee also consider its findings.

## Action 1

6. We have also considered a range of other issues which have been raised by correspondents including staff funding for ABAT (Argyll and Bute Addictions team) and budget monitoring processes. Evidence was reviewed regarding these issues and we have nothing to report in relation to these matters in the detail of this report.
7. The Care Inspectorate is the statutory regulator of care services in Scotland. The scope of this work does not include an assessment of the quality of services being provided on behalf of the ADP.

8. This report is made solely to the parties to whom it is addressed and for no other purpose. In accordance with paragraph 125 of the Code of Audit Practice approved by the Accounts Commission for Scotland, we do not undertake to have responsibilities to members or officers, in their individual capacities, or to third parties.
9. This report will be shared with the correspondents who contacted Audit Scotland about the commissioning process for this contract.

# Background

10. Alcohol and Drug Partnerships were introduced by the Scottish Government in April 2009. Argyll and Bute ADP brings together Argyll and Bute Council, Highland Health Board, Police Scotland, Scottish Fire and Rescue Service, the Community Justice Authority (CJA) and various third sector organisations to improve outcomes for its service users. The lead agency is Highland Health Board which is responsible for managing ADP finances. The ADP reports to the Argyll and Bute CPP (Community Planning Partnership) Management Committee.
11. Argyll and Bute ADP has a total budget of £1.25 million. The community based recovery services, the subject of the commissioning process, aim to provide support, promote recovery and increase health and wellbeing by helping service users reduce problematic alcohol/drug use and maintain tenancies. Statutory services are provided by the Argyll and Bute Addiction Team (ABAT) which includes assessment, recovery planning and detoxification.
12. In March 2013 the ADP Executive Group (previously Lead Officers Group) determined that a commissioning process would begin in 2014. In July 2013, an ADP commissioning group was set up to consider the service specification and procurement process necessary for tendering for community based recovery services. The commissioning group formed two sub-groups to separately consider service specification and the procurement process.
13. ADP has no separate legal personality and cannot enter into contracts. Consequently, Argyll and Bute Council undertook the commissioning process on behalf of the ADP. The contract for these services is between the council and Addaction Scotland. The contract is for a fixed price of £475,139 per annum, for three years, with the ADP contributing £88,200 of the contract value per year and the council and Highland Health Board contributing the balance. Tenders were evaluated on the quality of services proposed to be delivered within the specified price.



# Audit findings

## Compliance with legislation

14. Concerns have been expressed in relation to Addaction Scotland's compliance with legislation in respect of registration with the Care Inspectorate and the commissioning process. Each of these areas was covered by the council's internal review. Concerns have also been expressed in relation to post-contractual negotiations and the TUPE (Transfer of Undertakings (Protection of Employment) Regulations) implications for the predecessor third sector organisations and their staff. We consider these issues below.

### Care Inspectorate registration

15. The invitation to tender states at part 2, section 57.1 that; "It is a condition of this contract that the Contractor must be registered with the Care Inspectorate to provide the appropriate care services within the Argyll and Bute locality. The Contractor must continue to be registered with the Care Inspectorate throughout the duration of the contract." The council's internal review recorded that Addaction Scotland was not providing housing support services in the area without Care Inspectorate approval; however we did not believe that the overall position with the registration was clear in the internal report. We requested further information from the council to clarify the position.
16. Addaction Scotland, although registered with the Care Inspectorate in other areas of Scotland, was not registered to provide housing support services in Argyll and Bute before 25 February 2015. Addaction Scotland has assured the council that during this period it did not engage in providing housing support services and that all services provided to service users were unregulated services and therefore did not require Care Inspectorate registration.
17. Addaction Scotland applied for a variation of its Dumfries and Galloway registration with the Care Inspectorate in early January 2015 and this was approved on 25 February 2015 and recorded on the Care Inspectorate website. Addaction Scotland now plans to apply for a full Argyll and Bute registration. Addaction Scotland was in breach of the contract for almost two months as the contract states that the registration with the Care Inspectorate should be in place for the duration of the contract.
18. The ADP/council considered this to be a technical breach and explained that it was aware of this position regarding the registration and that alternative arrangements were in place to provide registered services during this period. The ADP and council were prepared to accept and work round this position.

### Recommendation 1

### Scope of Contract / Housing Support Services

19. The invitation to tender document (ITT) part 3, section 8.5 states "current level of housing support services will remain consistent immediately following the award of the contract to

provide continuity of service. Thereafter, providers will be required to carry out a full review of services".

20. Shortly after commencement of the contract, Addaction Scotland used a programme of assessment to determine the appropriate services required for all known service users. Addaction Scotland did not identify any individuals who needed housing support services at this time. Addaction Scotland's review is aimed at ensuring that ADP funds are appropriated to the correct services to help with service user recovery. We have been advised that care plans for service users continue to be monitored by Addaction Scotland to ensure they remain relevant.
21. Part 3, section 8.6 of the ITT also required that by year three of the contract, changes would be made to service provision to improve outcomes and equality of service across the council. Addaction Scotland stated in its tender submission that it wanted to work with the commissioner at an early stage to make changes to address inequalities.
22. Minutes of post contractual negotiations record that it was agreed between Addaction Scotland and the ADP that rather than by year 3, this could be carried out immediately. Our review has established that other bidders in their tender documentation also considered that the review of service provision immediately after award of the contract would be beneficial.
23. On 18 February 2015, the Procurement and Commissioning Manager at Argyll and Bute Council confirmed to us that, in the council's opinion, Addaction Scotland's plans to review services straight away rather than by year 3 did not constitute a formal variation to the contract. Subsequently in the minutes of the ADP Executive Group meeting of 19 February 2015 it was stated that "A variation will be prepared to make explicit that the review of the model of care required to be completed by year 3 will be undertaken from the outset by Addaction." The ADP/council reconsidered this issue and is formalising a contract variation with Addaction Scotland.
24. Correspondents raised an issue with regard to part 3, section 8.9 of the ITT which states that "The projected minimum service levels for each of the lots are outlined in the table...In Years 1 and 2 services will continue on a like for like basis". The ITT table at section 8.12 detailed a minimum 805 hours of housing support per month for Year 1 and 2 and a minimum of 350 new referrals per annum. The correspondents believed that as "years 1 and 2 services continue on a like for like basis..." that the review of all services (para 19) could not take place until year 3.
25. Two third sector organisations have confirmed to us that they believed that the projected minimum levels of housing support detailed in the ITT would have to be in place for the first 2 years of the contract and that this would be too difficult to deliver within the price of the contract. They did not therefore submit tender applications.
26. The ADP/council state that the ITT section 8.5 (para 19) is clear that the review of all services would begin immediately after the contract was awarded and was a contractual requirement. They added that this is a separate review from that detailed in section 8.6 (para 21) which was

to provide more equitable services across the council area by year 3 and that the contract variation agreed with Addaction Scotland relates only to accelerating the provision of equitable services from year 3 to year 1. The council also highlighted that potential bidders could have sought guidance about any issues relating to the ITT by submitting questions through the Public Contracts Scotland portal or contacted Business Gateway for support.

27. In our opinion the timescales with regard to the review of services in the ITT could reasonably be interpreted in either way which means that there is a degree of ambiguity over the wording in the ITT. The ITT detailed projected minimum levels of housing services going forward and we believe that the inclusion of this may have stopped some organisations from bidding for the contract.
28. We considered that that this immediate review of services and the non-supply of housing services could be material to this contract and may breach public procurement legislation. Ultimately this would be for the courts to decide. In these circumstances, we recommended that the council should take external legal advice, in addition to that already obtained internally, to satisfy itself that the contract is compliant with public procurement legislation.

## Action 2

29. The council has now obtained external legal advice which supports the council's view that the contract agreed with Addaction Scotland is valid. The advice stated that "it was the implementation of the review, and not the agreement of the variation, which has brought about the reduction in the Housing Support requirements" and that "the outcome of the review (whenever it took place) could not have been predicted... the status quo could have continued". The advisers agree that it is ultimately for the courts to determine whether a change to a contract is a material one for the purposes of public procurement legislation. They also note that there is no current legal challenge to the decision to amend the contract and that if there were, any breach of procurement law gives remedies to aggrieved bidders but does not affect the validity of the contract or the amendment.
30. The conclusion of the advisers is that; "With the outcome of the procurement being a single supplier winning all lots the Council had an opportunity which would have not been open to it had different suppliers been appointed to different lots. That opportunity was to accelerate the review. In our view it was not unreasonable for the Council to assess the potential benefits of that acceleration in terms of best value and the needs of the service users, as against the potential risk of a procurement law breach, which seems to us to be a risk within reasonable parameters. To put this another way, had the Council not accelerated the review on the basis of procurement law, it could have been criticised for having adopted too cautious a position on procurement law risk to the detriment of best value and the needs of the service users."
31. We note the conclusions of the legal adviser and in these circumstances feel it is reasonable for the council to conclude that the contract with Addaction Scotland remains valid.

## Tender Evaluation

32. The council has experienced procurement officers and a detailed procurement policy. We were provided with evidence that, council officers provided the commissioning group (procurement sub-group) with examples of good practice, council guides for procurement / evaluating tenders to help ensure that the invitation to tender was clearly written and compliant with legislation. The tender evaluation process was discharged in accordance with the council's 'evaluating tenders' document.
33. A panel representing the ADP was formed to review tenders. In accordance with guidelines the panel was provided with instructions including the guide to evaluating tenders. The eight panel members scored the bids individually before convening to discuss an overall panel score. We note that:
- one scoring panel member assumed that there was going to be an interview phase with the two highest bidders
  - one scoring panel member submitted a copy of their individual scorecard over four months after the evaluation process was completed.
34. We are advised that the purchasing officer supporting the panel and commissioning process informed all panel members that following the computation of the final scores the two top tenderers were close. The purchasing officer also advised the evaluation panel that they should meet again to discuss these two tenders with a focus on reviewing the highest scoring questions to differentiate between the bidders. We raised this matter with the council's Procurement and Commissioning Manager who advised that this can be a common occurrence. Whilst it is our view that this practice of further discussion is appropriate, no explicit reference is made to this process in either the procurement manual or evaluation of tender documents. We have therefore recommended that the documents should be updated to include this process.

### Recommendation 2

## Handover of service user information

35. The previous third sector providers were asked to pass over service user information to be used by Addaction Scotland. They planned to explain to the users about the changes to the service provider. Some of the previous providers raised concerns that providing this type of personal information may contravene the Data Protection Act, 1998.
36. The Chair of the ADP obtained legal advice that concluded that sharing basic information (service user details) would not contravene the Act. The council also confirmed that it sought guidance regarding this from the Information Commissioner's Office. Furthermore, it was a contractual obligation of previous service providers to provide this information to the council. By 31 January 2015, the previous third sector providers had either passed on details to Addaction Scotland or notified their service users about the change of community based service provider.

37. No complaints have been made to the Information Commissioner's Office regarding these requests therefore no formal determination has been made as to whether there was a breach of the Act. However the council acknowledges in its review that a longer lead time for the contract would have provided a greater opportunity to resolve service users' issues related to data protection.

### Recommendation 1

## The Transfer of Undertakings (Protection of Employment) Regulations (TUPE)

38. TUPE Regulations have been referred to in correspondence received by us. The TUPE requirements are a matter for Addaction Scotland and the predecessor service providers rather than the ADP/council. This matter is outwith the scope of Audit Scotland's remit and consequently the scope of this review.

## Conflicts of interest

39. Concerns have been raised with regard to conflicts of interest in the commissioning process where it was reported that a named member of the ADP Delivery Group, whose organisation was interested in the tender, prepared the service specification for the commissioning process (pages 39-56 of the invitation to tender).
40. Concerns have also been raised regarding a predecessor third sector provider managed by the named member above merging with Addaction Scotland later in 2015. We consider these issues further below.

## Preparation of Service Specification

41. From an examination of documentation, we established that a draft service specification reported to be 'completed by' the ADP Delivery Group officer referred to above was presented to the Implementation (now Delivery) group on 27 November 2013. A different member of the service specification group has confirmed that the work as at 27 November was draft version six and a collaboration of all of those in the service specification group. Evidence was provided which shows that this version was then discussed in emails by service specification group members, which also included other third sector service providers. The draft had progressed to version eight by 21 February 2014, the date when the prior information notice relating to the tender was published on Public Contracts Scotland website. We have concluded that the specification work to this date was not solely prepared by any individual officer.
42. On 21 February 2014, following the issue of the notice to tender, the named individual emailed all members of the commissioning group stating that their organisation was expressing an interest in the tender and therefore could not be exposed to any sensitive or confidential information and going forward did not attend meeting items where this information was being discussed. There is no evidence of this individual being involved in the process after this date. It should be noted that other members of the service specification group also expressed an interest in the tender.

43. The procurement sub-group, which contained no parties interested in the tender, then reviewed the service specification on at least six additional occasions after 21 February 2014. In March 2014, the procurement group compiled all the commercially sensitive sections in the tender related to 'specific services required' including all budgetary information, the fixed price for the contract and the minimum service requirements. We have found no evidence that any interested party had commercially sensitive information in advance of the ITT publication.
44. The invitation to tender was then reviewed and updated following feedback from the Scottish Government ADP National Support team before finally being approved by the ADP Executive Group in June 2014 in a confidential session. The minutes confirm that none of the interested parties attended this session. However, this confidential session of the ADP Executive Group, where commercially sensitive discussions took place, was not acknowledged in the published minutes for June 2014.

### Recommendation 3

#### Merger of service providers

45. From our review of the tenders submitted by Addaction Scotland and other bidders for the contract, it was evident that collectively, the bidding organisations were in communication with all the then incumbent third sector organisations to share ideas and/or consider mergers or partnership working in the area. It was also evident from the tenders that in early 2014 at least two incumbent third sector organisations approached larger national organisations to discuss potential joint working. Opportunities for these types of discussions were available to all incumbent organisations. On the basis that none of the incumbent providers were involved with commercially sensitive areas of the invitation to tender we have concluded that no bidder would have had early access to sensitive tender information.
46. The manager of the organisation which is merging with Addaction Scotland declared an interest in the tender process on 21 February 2014 and was no longer involved in the tender process. We therefore consider it acceptable for them to have worked with a bidder following this date. No conflicts of interest have been identified in the commissioning process.

#### Service Impact

47. In addition to the issues raised regarding housing support service provision, concerns have been raised that there was an insufficient lead period for the contract for effective handover of the services. The internal review has acknowledged that this was the case. Other areas of concern raised with us but not covered by the council's review relate to capacity to deliver the service within the fixed price and whether the invitation to tender may have favoured larger organisations. These issues are considered further below.

#### Contract Lead Time

48. The internal review of the commissioning process recorded that the lead time between the contract award and start of the contract was unnecessarily short and a longer lead time would have permitted better communication with service users. A longer period would also have



allowed any data transfer queries to have been resolved and allowed the Care Inspectorate registration to have been resolved prior to the start of the contract.

49. We have confirmed that the ADP had a communication plan in place to communicate with service users. Letters were sent to service users via third sector organisations in November and December 2014 notifying them of the change of service provider. However, the notice of Addaction Scotland winning the contract was only posted on the ADP website on 17 December 2014 and flyers/posters for service points detailing Addaction Scotland as the service provider were emailed out on 18 December 2014.
50. The short lead time was detailed in the tender documentation agreed by the ADP Executive Group in June 2014. In mid December 2014, the ADP Executive Group recognised that there may have been risks to service users in the transition period and requested that existing service providers extended service provision by one month to 31 January 2015 at a cost of £28,000 to smooth the handover period. There appears to be no particular reason as to why this time period was so short, given that service users would need assurances over the new service provider and style of delivery. The ADP should consider lengthening transition periods for future contracts.

### Recommendation 1

## Capacity to deliver

51. Addaction Scotland currently has two bases in Argyll and Bute: Dunoon and Bowmore, Islay. Its tender submission records that it plans to have two more static locations in Argyll and Bute and are seeking premises. ADP Executive Group minutes from February 2015 state that in addition to the 56 service users which transferred to Addaction Scotland, 34 new referrals have started using Addaction Scotland's services in the first two months of 2015. This indicates users are accessing services.
52. The contract award was on the basis of a fixed price for each of the three years of the contract and is outcome based. Senior officers have confirmed that they are confident that Addaction Scotland can provide the redesigned service within the revised budget and have taken assurance that the level of funding is sufficient from the fact that four organisations tendered for the fixed price contracts.
53. Addaction Scotland's work has been reviewed by the Care Inspectorate in other areas across Scotland. In Dumfries and Galloway (where the same manager will oversee work in Argyll and Bute), which has similarities with Argyll and Bute in terms of dispersed communities, Addaction Scotland's service in 2014 was rated as very good '5' in all four reporting areas (6 being highest ranking) by the Care Inspectorate.
54. The Chair of the ADP has confirmed that a local balanced scorecard will be used for ADP reporting/monitoring going forward using national and locally developed targets. There will be a minimum of four review meetings each year and performance will be reported to both the ADP and council on a quarterly basis. The Chair considers that adequate measures are in place to monitor the performance of Addaction Scotland in meeting the aims of the ADP. We

have recently been advised that a report detailing monitoring arrangements has been taken to the ADP Executive Group in April 2015. The council has informed us that the ADP is happy with progress to this date.

**Action 3**

## Length of tender

55. In July 2014, the Scottish Government ADP National Support Team suggested that the length of the tender documentation and level of work required to submit an application could be deemed to favour applications from larger organisations over smaller bodies. The council's Procurement and Commissioning Manager has confirmed that the procurement team considered these issues in designing the ITT process and believed that all smaller incumbent providers would meet any pre-qualifying questionnaires and therefore a one stage tender was appropriate. In addition, there were four separate lots representing distinct geographical areas: bids could be submitted for one or more areas.
56. To assist smaller organisations some free sessions in preparing tenders were provided, which some existing service providers attended. These sessions were run in 2013 and 2014 through the Supplier Development Programme (SDP) and advertised on the council and SDP websites. In addition the ITT notice on Public Contracts Scotland website clearly stated that if suppliers required assistance with completing tender documentation that they could contact Business Gateway for support. Although the help detailed above was available and some predecessor third sector service providers were involved in work relating to the tender (para 41), correspondence from two previous third sector service providers stated that they did not believe that they were given support by the ADP in relation to the tender process. The council noted that no parties had contacted the ADP or Business Gateway for support regarding tenders. Evidence provided also shows that all questions in relation to the ITT were answered promptly through the Public Contracts Scotland portal. On the basis of the above, we have concluded that the process did not discriminate in favour of either smaller or larger organisations.

## Governance issues

57. Governance issues were reported in the work carried out by Bill Brackenridge, the Chair of the SLCC. In October 2014, he was asked by the Chair of the ADP to investigate complaints regarding the allocation of money to support children and young adults with addiction problems by the Argyll and Bute ADP. He concluded that; "The corporate governance of this whole issue, in my opinion, falls far short of best practice."
58. The Chair of the ADP has confirmed that there are numerous forums in the ADP and that the structure is cumbersome. This makes it more difficult to determine reporting lines and the appropriate forum/group for raising issues. Some members of the ADP have also voiced concerns that having raised issues, they are not being discussed or answered timeously. In addition the council has noted that the constitutional basis for some groups and sub groups formed during the commissioning process was unclear.



59. The Chair of the ADP is aware of communication difficulties between various representatives across the partnership and is working towards improving them. The Chair has also expressed the opinion that the reasons for these difficulties cannot be attributed to any single cause, but has suggested that focussing on outcomes and working together in decision making and in meetings may help address these issues. We have been advised that the ADP has held two strategy development days and an improvement plan is currently being developed.

**Recommendation 4**

60. A number of weaknesses relating to the preparation, approval and custody of minutes were identified from our review, including;
- Meetings for which no minutes are available. Although some reports were taken to the Implementation (now Delivery) Group, minutes should have been recorded each time the Commissioning Group met i.e. the Minutes of 27 November 2013 of the Implementation group made reference to a commissioning meeting on 11 November 2013 for which there appears to be no minutes.
  - No formal evidence of the previous minutes being agreed at the next meeting of the ADP Commissioning Group.
  - No formal evidence of some post-contractual meetings with Addaction Scotland being agreed at the next meeting.
  - After 21 February 2014, the procurement group (Commissioning Group) did not prepare any minutes and evidence has had to be collated from emails, calendar appointments and meeting notes.
  - Some minutes remain in draft form on the ADP website significantly after meeting dates.

**Recommendation 3**

# Findings of the internal review

61. In February 2015 a report covering the results of the council's internal review was discussed with senior officers of the council and the ADP. The internal review concluded that;
- "The contract was awarded in compliance with all relevant legislative requirements and the contract award has not been the subject of any formal legal challenge.
  - The service specification and other contractual provisions are in line with relevant advice and guidance and meet the requirements of the ADP.
  - The service specification and other contractual provisions did not and do not favour one particular supplier over another.
  - The decision to tender the contract in lots corresponding to the administrative areas of the Council afforded an opportunity to tender to existing locally based service providers. Most chose not to take this opportunity.
  - The supplier to whom the contract has been awarded is a highly regarded and experienced provider of the relevant services and appears to be more than capable of complying with its contractual obligations and providing service users with an excellent and effective service.
  - The one concern about the contractual process is that the period between the contract award and commencement of the contract to have been too short. This caused problems for the incoming service provider as described above and for the resolution of service user communication/ referral arrangements. I have however noted that that in recognition of the potential impact on service continuity, the Executive Group members asked the commissioning team to offer a one month extension to existing service providers to mitigate any potential risk during the transitional period and in particular over the festive holiday period. In effect this resulted in Addaction Scotland and existing service providers providing a parallel service for the month of January 2015 to support a smoother transition, except in Kintyre, Mid Argyll, Islay and Bute, and in part in Oban where the existing providers chose not to agree to the contract extension."
62. The council's view is that in these circumstances the contract remains valid and appropriate. Whilst some of these findings are consistent with our own, we believe that there is a risk that the contract variation may be a material change to the contract and may not be compliant with public procurement legislation. Based on our comments, the council has taken external legal advice regarding the contract variation (paras 29-30). We have also reported on the issue of Addaction Scotland's failure to be registered with the Care Inspectorate in time for the start of the contract (paras 15-18).
63. The internal report made recommendations for improvements relating to the lead time for moving to new suppliers, the governance structures of the ADP and the process for approval

and storage of minutes. These relate to recommendation 1, 3 and 4 of the recommendations reported below. The Chair of the ADP has been tasked with addressing the recommendations from the internal review. At its meeting of 11 March 2015 the ADP Executive Group, considered the internal review and accepted all the recommendations made by the council.

64. Despite the public interest in this issue, the council's report was not discussed with elected members or by any committee of the council. The council advised us that this was not done to avoid duplication and operate within the agreed governance structure of the ADP where matters relating directly to it should be reported to the ADP. In our Annual Report on the 2013/14 Audit we reported that members of the public have told us that they would like to see more information available on key issues. We recommended that the council should review the range of reports that it discusses in private and consider whether it is getting the balance right between open and closed consideration of items. The council has committed that this report will be taken to the ADP Executive Group and will be taken to public sessions of the Audit Committee and CPP Management Team.

# Actions taken in response to audit findings

1	To demonstrate accountability on this contract, the ADP/council have agreed that this report should be considered by the ADP Executive Group, the CPP Management team and the council's Audit Committee with a formal response minuted and monitored. The recommendations are not only relevant to ADP contracts. They should be considered for all council contract procurement exercises.
2	As the contract variation could be considered a material variation to the contract, the council has taken external legal advice on its compliance with public procurement legislation.
3	A timetable for quarterly reporting of Addaction Scotland's services to the ADP and council was presented and approved at the ADP Executive Group on 21 April 2015.

## Other recommendations

1	Lead times of contracts should be assessed to ensure that there is sufficient time for handovers to be completed and contract requirements to be fulfilled.
2	The procurement manual and evaluation of tender documents should be updated to include a clause which states that where tender bids are close after being evaluated by the tender panel, further discussions will take place to differentiate the bids. This should be included for clarifying the position for all involved in the tender process.
3	To demonstrate sound governance, minutes should be taken at all important meetings of the ADP and then agreed at the following meeting.
4	Governance arrangements in the ADP should be improved to enhance openness and transparency. Allowing open discussion and debate on strategy, budgetary information, etc. will help members to contribute effectively to the work of the ADP. Delivering a robust improvement plan should help with communication difficulties.