

Commissioning and Procurement Executive Committee - 13 December 2022

Subject:	Recommissioning of Independent Advocacy Services for Adults		
Corporate Director/ Director:	Catherine Underwood – Corporate Director of People Katy Ball – Director Commissioning and Partnerships		
Portfolio Holder:	Cllr Linda Woodings, Adults and Health		
Report author and contact details:	Melody Hinds – Commissioning Officer melody.hinds@nottinghamcity.gov.uk		
Other colleagues who have provided input:			
Key Decision	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Subject to call-in	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Reasons: <input checked="" type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £750,000 or more taking account of the overall impact of the decision		<input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital	
Significant impact on communities living or working in two or more wards in the City		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Type of expenditure: <input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Capital :			
Total value of the decision: £2,322,342			
Wards affected: All			
Date of consultation with Portfolio Holder: 13.12.22			
Relevant Council Plan Key Outcome: <div style="display: flex; justify-content: space-between;"> <div> Clean and Connected Communities Keeping Nottingham Working Carbon Neutral by 2028 Safer Nottingham Child-Friendly Nottingham Healthy and Inclusive Keeping Nottingham Moving Improve the City Centre Better Housing Financial Stability Serving People Well </div> <div style="text-align: center;"> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> </div> </div>			
Summary of issues (including benefits to citizens/service users): <p>Local Authorities are under several statutory duties to provide Independent Advocacy Services for Adults. The current Independent Advocacy Service for Adults was jointly commissioned by Nottinghamshire County Council and Nottingham City Council and is delivered by POhWER. The service is known as ‘Your Voice, Your Choice’.</p> <p>The contract expires, following earlier extensions, on 30 September 2023. The current services therefore need to be re-commissioned. Nottinghamshire County Council will be the lead authority on procurement of the recommissioned services. It is proposed to enter a Collaboration Agreement with Nottingham City, which sets out the framework for collaboration and outlines each partner’s roles and responsibilities in the recommissioning.</p> <p>Executive approval is required for the City Council’s spend of the allocated budget, entering into a Collaboration Agreement, engaging in a joint tender process and entering an appropriate single provider framework agreement and call-off agreements with the successful provider.</p>			

Exempt information: None	
Recommendations:	
1	To approve to undertake a tender process for a single provider framework to deliver Independent Advocacy Services for Adults until September 2032 through a 5 year framework with the option to call off for a further 4 years at the end of the initial contract period and to approve the associated budget of £2,322,342.
2	To delegated authority to the Director of Commissioning and Partnerships to enter into a Collaborative Agreement with Nottinghamshire County Council for the recommissioning of Independent Advocacy Services for Adults.
3	To delegate authority to the Director of Commissioning and Partnerships to approve and award the outcome of the tender process for the Independent Advocacy Service for Adults.
4	To delegate authority to the Head of Procurement to enter into an appropriate Framework Agreement and to award and sign call-off contracts.

1. Reasons for recommendations

- 1.1 Councils have a statutory responsibility to ensure the availability of advocacy services for vulnerable adults. These are jointly commissioned at present with Nottinghamshire County Council. The current contract ensures both authorities advocacy requirements are met but it expires in September 2023 following previous extensions. Both Nottingham City and Nottinghamshire County Council need to recommission the provision of services after September 2023.
- 1.2 The purpose of the Collaboration Agreement is to set out the roles and responsibilities of each partner organisation and to outline accountability arrangements, financial contributions and dispute resolutions.
- 1.3 Continuing to commission the service jointly with Nottinghamshire County Council will ensure advocacy provision is equitable across a Nottinghamshire/Nottingham-wide footprint and will offer economies of scale and comply with the best value duty.
- 1.4 A Single Provider Framework will enable the necessary contracts in the proposed period, to be called-off to ensure all current statutory requirements in relation to advocacy are met. A Single Provider Framework will allow Councils to call off individual service requirements as appropriate under the terms outlined in the Framework with the provider, without the need for further competition. A maximum 4-year contract length in each case has been determined as appropriate for the services in question.

Nottingham City Council would therefore not be overcommitting nor be bound to a long-term financial commitment. This type of Framework also gives the Councils the opportunity to call-off contracts in the future that may be necessary to meet new or changing requirements without the need for a further competition. Anticipated changes are due to the implementation of Liberty Protection Safeguards (LPS) and changes to the Mental Capacity Act (2005) around Independent Mental Capacity Advocacy (IMCA).

- 1.5 A single provider or a partnership arrangement working on a lead/sub basis with a single point of access, will ensure the delivery of a consistent service across the City and County. It will also ensure a simpler service offer for people requiring advocacy; as well as professionals making referrals, than would be achievable through a multi-supplier framework.
- 1.6 As a service governed by the light touch procurement regime, a Framework duration of 5 years is proposed to provide flexibility for the implementation of Liberty Protection Safeguards (LPS) and the awaited changes to the Mental Capacity (2005).
- 1.7 A proposed maximum duration of 4 years call-off contract, towards the end of the 5 years would allow for full implementation of the above changes and for the provider along with all stakeholders to embed the new practices and the opportunity to measure early indicators of impact. As the advocacy services are a statutory regulation, this duration offers stability to the market and the ability to award call off contracts to enable a consistent approach.

2. Background (including outcomes of consultation)

- 2.1 The current contract ensures that all local authority advocacy requirements are met. Councils have a statutory responsibility to ensure the availability of advocacy services for vulnerable adults where:
 - 2.1.1 qualifying patients, who are detained or subject to a community treatment order, require support and assistance from an Independent Mental Health Advocate (IMHA) under the Mental Health Act 1983 as amended.
 - 2.1.2 in certain circumstances relating to decisions about their health or care needs, people who lack capacity and have no one else to support them, require support from an Independent Mental Capacity Advocate (IMCA) under the Mental Capacity Act 2005.
 - 2.1.3 a person who lacks capacity and is being deprived of their liberty, and where the best interests assessor is unable to recommend anyone, an advocate should be appointed as the Relevant Person's Paid Representative (RPPR) to support the person through the Deprivation of Liberty Safeguards (DoLS) process.
 - 2.1.4 a person has substantial difficulty in being involved in the assessment of their needs or with care planning or reviews, safeguarding enquiry or safeguarding adult review, an independent advocate is required to support them under the Care Act 2014.
 - 2.1.5 people who, for a wide range of reasons, find it difficult to navigate the health complaints system themselves an independent advocate is to be provided, by the NHS complaints advocacy service to help people to speak up, express their views and achieve personal outcomes. It is a requirement of the Health and Social Care Act 2012 that councils make provision for this service.
- 2.2 In addition to the statutory requirements listed above, POhWER also delivers the following:

- 2.2.1 Transforming Care Advocacy which is delivered as part of the Transforming Care Fast Track Programme. The programme is commissioned and funded by the Nottingham and Nottinghamshire ICB but is available to eligible Nottingham City citizens. The latest extension ensures this contract expires at the same time as the core contract which is the 30/9/23. The value of the transforming care advocacy is £40,000pa.
- 2.2.2 Peer advocacy and support groups which are facilitated by volunteers funded by POhWER. POhWER currently have 7 volunteers with lived experience of using services who can offer peer support and pick up a small number of community advocacy cases that do not meet the criteria for the types of advocacy outlined above.
- 2.2.3 Rule 1.2 representatives is a service which has been provided since March 2022 and is similar to that provided by RPPRs but supports adults living in their own homes, in supported living or other settings which are not hospitals or care homes. This is funded by the City and County DOLs teams by means of a spot arrangement.
- 2.2.4 Changing Futures is commissioned by Nottingham City Council and Nottingham & Nottinghamshire ICB from July 2022 to March 2024. The programme is funded by the Government. Provides independent advocacy for beneficiaries of the Nottingham Changing Futures Programme who experience the most significant Severe Multiple Disadvantage (SMD).
- 2.2.5 Support to develop Co-production in Nottinghamshire, funded by County. In January 2022, the contract was varied to enable Pohwer to develop a bank of people with lived experience to support the County in the design, commissioning and reviewing of its services, policies and guidance. The value of the work was £35,000.
- 2.3 A strategic commissioning review of the service was undertaken between June to November 2022. The review included analysis of the current service through consultation, data monitoring and feedback received from beneficiaries and stakeholders identified the following gaps:
 - 2.3.1 Lack of IMHA provision for children.
 - 2.3.2 Underrepresentation of BAME service users across all advocacy services whilst nationally, figures indicate black people were 11 times more likely to be detained under the Mental Health Act, followed by Mixed ethnicity people (NHS,2022).
 - 2.3.3 There is expected to be a greater emphasis on Advocacy in LPS. The RPPRs role will be phased out meaning individuals who do not have family or friends to act as the Appropriate Person, will require an IMCA. The details of this increased activity are difficult to predict as central government are still to release further information following the consultation on the code of practice.
 - 2.3.4 The Government published a White Paper in August 2021, which sets out proposed changes to the Mental Health Act 1983 (MHA). The Government proposes to extend the statutory right to an IMHA to all

mental health inpatients, including informal/voluntary patients. In addition, changes intended to increase involvement in care planning, support people to prepare advance choice documents, give greater rights to challenge treatment decisions and increase powers to appeal to tribunal may all increase demand on IMHA services. The draft Mental Health Bill 2022 was published in June however, there is no timetable yet as to when this will be introduced as law.

- 2.3.5 Anecdotal feedback from people with a sensory impairment has identified inequality of access to advocacy services.
- 2.4 It is therefore recommended the recommissioned advocacy service must meet the following requirements;
 - 2.4.1 Able to deliver all the LAs current statutory advocacy requirements and be flexible enough to meet any future requirements.
 - 2.4.2 Equality of access to be at the forefront of the provider's organisational values and possessing the skills and demonstrable evidence to do this.
 - 2.4.3 Be independent of the LAs and be free from conflict of interest both in design and operation.
 - 2.4.4 The offer should be consistent, clear and easy to navigate and use, responsive and provided quickly when required.
 - 2.4.5 Cases closed when an issue is resolved but the service should be flexible enough to enable people to continue to access support when there are long gaps in a period of intervention.
 - 2.4.6 Staff should work in the most efficient way and reduce travel time wherever possible. This will involve the service being delivered by multi skilled advocates who are able to deliver different types of advocacy.
 - 2.4.7 The model of delivery should be outcome focused to ensure the advocacy provided is delivering better results.
 - 2.4.8 People using the service should have a choice in the way they work with their advocate and this will include face to face contact as well as virtual options.
 - 2.4.9 There will need to be a single point of access for users, referrers and commissioners.
 - 2.4.10 Will need to be flexible enough to meet any future requirements including the changes that will be needed for capacity and roles that will be necessary due to LPS.
 - 2.4.11 People will be supported by one advocate to navigate through their options of advocacy types.
 - 2.4.12 Advocates should be able to reach people across the county in a timely way, increasing efficiencies and reducing travel time.

- 2.4.13 An outcome focused model to deliver better results for people receiving advocacy.
- 2.4.14 The Advocacy offer to be delivered via a range of means including face to face, telephone and virtually where appropriate.
- 2.4.15 Advocacy should be delivered to all age groups in all mental health in-patient settings, where there is no other independent advocacy offer available.
- 2.4.16 Provide social value using volunteers who can support the core contract through the delivery of peer advocacy.
- 2.4.17 This current service is a block contract, and the value is £908,210 per annum. The County's contribution is £650,172 pa and the City's is £258,038 per annum.
- 2.4.18 Based on national benchmarking, we feel that there is sufficiency within the budget to deliver the full statutory requirements of the service. We need to continue to work with County to determine how to respecify the service, to achieve the outcomes within the current financial envelope. Therefore, we request to retain the current City budget of £258,038 per annum (£2,322,342 over 9 years) to provide this.
- 2.4.19 We intend to work within the resources available to us and will therefore work closely with the provider to monitor efficiencies.
- 2.4.20 We are acutely aware of the potential risks associated with the implementation of Liberty Protection Safeguards (LPS), which is anticipated to occur between the end of 2023 into 2024. It is anticipated that additional funding will be required to deliver LPS, yet adequate information and data is not yet available to predict these costs. Furthermore, feedback from the consultation is still awaited and no indication has been offered as to whether the proposed timeline will remain.
- 2.4.21 The tender marking will apportion marks based on quality and cost to ensure best value.
- 2.4.22 Regular monitoring will assure the early identification of underutilisation or anticipated risk of reaching capacity in-year. Monthly monitoring meetings will be held to mitigate the aforementioned risks and the continual engagement with the regional local authorities advocacy board to review best practice approaches to spend, modelling and outcomes to further uphold a best value approach to the commissioning of advocacy services.
- 2.4.23 To ensure that Best Value is achieved, the tender process will incorporate elements for both quality and cost. It is intended that the figures in 2.1.17 will form the maximum contract value.

3 Other options considered in making recommendations

- 3.1 Not to procure an independent advocacy service for adults. This is not an option, as this would mean the councils would fail to meet their statutory duties.

- 3.2 To extend the contract to continue the service with the current provider. This is not an option, as all extension options in the current contract have been utilised.
- 3.3 Different services for specific forms of advocacy which would involve separate contracts with different providers. This was discounted as it could lead to the services being disjointed and small contracts are more susceptible to staffing problems and service disruption. There would be limited capacity to flex delivery to meet fluctuating demand.

4 Consideration of Risk

- 4.1 LPS will have a wider scope than current Deprivation of Liberty Safeguards (DoLS) and will apply to the following settings: care homes, NHS Hospitals, Education Facilities, Independent Hospitals, Supported Accommodation and Shared Lives accommodation.
- 4.2 Feedback from the LPS consultation in July 2022 is awaited. Therefore, the impact of LPS cannot yet be fully understood. The changes to the Mental Capacity Amendment Act (2019) will make 16 and 17-year-old citizens eligible for support under the LPS framework. Local Authorities will become responsible for spending and implementation as well as for provision of advocates including new advocates through the hospital. The extent of the impact this will have on capacity and resource is presently unknown. The use of a single provider framework will allow us to adapt the service provision to meet any new requirements.
- 4.3 The tender marking will apportion marks based on quality and cost to ensure best value. Regular monitoring will assure the early identification of underutilisation which will result in varying down the contract where necessary. This has been done previously.

5 Finance colleague comments (including implications and value for money/VAT)

- 5.1 This service is currently delivered via a block contract for which the existing value is £908,210 per annum. The County's contribution is £650,172 pa and the City's is £258,038 per annum. There is specific budget provision for this contract within the Community Care Voluntary Sector Contracts Budget (Cost Centre 16040).
- 5.2 There have been no inflationary uplifts on this contract since it commenced and the provider has been able to manage within the existing contract sum through managing vacant posts.
- 5.3 The Mental Capacity Amendment Act (2019) places additional responsibilities which will be delivered through this contract. The extent of the impact this will have on capacity and resource is presently unknown. Work is ongoing with the County to assess these resource implications and this is supported by a national benchmarking exercise to determine the anticipated hourly rate for this service. Monitoring information has also been used to determine the capacity required for this contract. At this stage it is anticipated that additional pressures arising can be contained within the existing contract sum and budget.

- 5.4 At this stage the proposed contract does not reflect the impact of Liberty Protection Safeguards (LPS) for which guidance and implementation dates are still awaited.
- 5.5 Best Value will be achieved by incorporating both quality and cost elements in the tender process as set out in the procurement guidelines.

Mark Astbury, Interim Adult Social Care Adviser: Finance 29.11.2022

6. Legal colleague comments

- 6.1 Access to independent advocacy ensures that people who lack capacity are supported and enabled to express their views and that they are represented in the decision-making process. The Local Authority has a statutory responsibility to ensure the availability advocacy services for vulnerable adults in the following circumstances:

- Under s130A of the Mental Health Act 1983 (as amended by section 30 of the Mental Health Act 2007) a local social services authority is under a duty to make arrangements for help to be provided by independent mental health advocates (IMHAs). IMHAs must be made available to certain “qualifying patients” subject to the powers or safeguards in the 1983 Act as amended, to provide support in the ways specified in the provisions.
- Sections 35 of the Mental Capacity Act 2005 (as amended) imposes a statutory duty on local authorities to make arrangements for ensuring that people who lack capacity and who have no appropriate family or friends to consult, have access to an independent mental health advocate (IMCA) when certain decisions are being made about their health or welfare:
 - serious medical treatment by an NHS body (section 37, MCA 2005);
 - the provision of accommodation by an NHS body (section 38, MCA 2005); or
 - the provision of accommodation by a LA (for example, in a care or nursing home) (section 39, MCA 2005).
- Where a person:
 - becomes subject to an authorisation under the DoLS scheme under Schedule A1 to the MCA 2005 (section 39A, MCA 2005);
 - is unrepresented while they are subject to an authorisation under the DoLS scheme in Schedule A1 (section 39C, MCA 2005); or
 - is subject to an authorisation under the DoLS scheme and has a relevant person's representative (RPR) appointed under Part 10 of Schedule A1, and the RPR is not being paid to act as P's representative (Section 39D, MCA 2005).
- Under the Care Act 2014 (s67) where the local authority considers a person would experience substantial difficulty in doing one or more of the following:
 - (a) understanding relevant information;
 - (b) retaining that information;
 - (c) using or weighing that information as part of the process of being involved;

(d) communicating the individual's views, wishes or feelings (whether by talking, using sign language or any other means) it must arrange for a person who is independent of the authority (an "independent advocate") to be available to represent and support the individual for the purpose of facilitating the individual's involvement in the following: carrying out needs assessment; carrying out carer's assessment; preparing a care and support plan; preparing support plan; revising care and support plan; revising a support plan; carrying out child's needs assessment; carrying out child's carer's assessment; and carrying out young carer's assessment.

- An identical duty arises under s 68 of the Care Act 2014 to arrange for a person who is independent of the authority (an "independent advocate") to be available to represent and support the adult to whose case is going to enquiry or review under section 42 or 44 for the purpose of facilitating his or her involvement in the enquiry or review.
- Under the Health and Social Care Act 2012 section 223A local authorities are under a duty to provide an independent advocate to help people to speak up, express their views and achieve personal outcomes, who, for a wide range of reasons, find it difficult to navigate the health complaints system themselves.

6.2 Although the County Council will lead on the tender and procurement it should be noted that a single-supplier framework arrangement is proposed and would be appropriate where the contracting authority is looking to achieve security of supply. This type of arrangement may also confer an element of exclusivity in favour of the supplier. This exclusivity could mean that the supplier is willing to provide the products at a lower cost.

6.3 The services being provided in this instance are healthcare and social services and so are subject to the light touch regime in regulation 74-76 of the Public Contract Regulation 2015. Under the regime contracting authorities are free to determine the procedures applicable themselves as long as they are transparent and abide to equal treatment principles. Additionally, the light touch regime makes clear that authorities are able to take account in the award of contracts factors such as the need for continuity, affordability, availability of services and specific needs of category users. The light touch regime is intended to allow as much flexibility as possible, and does not include detailed provisions prescribing each permitted variation to the main rules. Contracting authorities are therefore required to apply their judgement and discretion on a case by case basis.

6.4 In any light touch regime process the procuring authorities should consider:

that it is normal for the framework to include an obligation on the supplier to supply the relevant services as they are required by the contracting authority, however, a contracting authority will not normally want to commit to any minimum level of purchase.

A single-supplier arrangement may set out all the terms of the arrangement, or may not, in which case the contracting authority can ask the supplier to supplement its original tender before it considers whether or not to enter into a contract.

Following the award of a framework agreement to a single supplier, a contracting authority can award specific contracts to that supplier at any time during the term of the agreement. Award of these specific contracts must comply with the terms of the framework agreement. This means that while further information can be requested from the supplier to supplement its tender information, the terms of the framework agreement should not be varied, particularly any increase in the price to be paid.

- 6.5 Under regulation 33(3) PCR, the term of a framework agreement should not normally exceed four years except in exceptional circumstance where the particular subject-matter of the agreement justifies a longer term. There are no such prescribed restrictions under the Light Touch regime, however, there should be a robust justification for the length of the proposed framework agreement and called-off contracts to counter any claim that it constitutes an abuse of the PCR 2015.
- 6.6 The Collaboration Agreement proposed will ensure that the parties approach the joint re-commissioning of the services in a structured manner appropriate to the complexities of the services under consideration. Legal Service will support in the drafting of the Collaboration Agreement as required.

Richard Bines, Solicitor: Contract and Commercial 24.11.2022

7. Other relevant comments

7.1 Procurement

- 7.2 The decision to approve a tender process led by Nottinghamshire County Council to established a single provider framework to deliver Independent Advocacy Services for Adults until September 2032 through a 5 year framework with the option to call off for a further 4 years is supported by Nottingham City Council's Procurement Team. The County Council will lead the procurement process with input from NCC as needed.

Nicola Harrison, Lead Procurement Officer: People 23.11.2022

8. Crime and Disorder Implications (If Applicable)

- 8.1 Not applicable

9. Social value considerations (If Applicable)

- 9.1 In 2021/22 a total of 1,488 people reported improved outcomes in the following areas;

- Increased Voice and Personal Control;
- Improved Opportunities;
- Challenging Injustice;
- Increased independence;
- Had Rights Upheld

Therefore, demonstrating the citizen-level local impact of the independent advocacy service achieved between the collaboration of Nottingham City and Nottingham County.

- 9.2 The independent advocacy services have proven outcomes which demonstrate improved health outcomes for citizens. This subsequently increases the overall local health outcomes for Nottingham and Nottinghamshire.
- 9.3 Improved local health outcomes contributes to socio-economic factors such as healthy life expectancy, employment and local economic development.

10. Regard to the NHS Constitution (If Applicable)

Local Authorities have a statutory duty to have regard to the NHS Constitution when exercising their public health functions under the NHS Act 2006. In making decisions relating to public health, functions we consider the NHS Constitution where appropriate and take into account how it can be applied in order to commission services to improve health and wellbeing.

11. Equality Impact Assessment (EIA)

- 11.1 An EIA has commenced and will be completed as necessary.

12. Data Protection Impact Assessment (DPIA)

- 12.1 An EIA has commenced and will be completed as necessary.

13. Carbon Impact Assessment (CIA)

- 13.1 A CIA is not required.

14. List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

- 14.1 None.

15. Published documents referred to in this report

- 15.1 Mental Health Act 1983
- 15.2 Care Act 2014
- 15.3 Health and Social Care Act 2012
- 15.4 Mental Capacity Act 2005 (as amended)
- 15.5 Mental Capacity Amendment Act (2019)