

Subject:	Joint re-commissioning of a Children’s Advocacy and Independent Visitor Service		
Corporate Director:	Ailsa Barr - Children and Education Services (Interim)		
Director:	Karla Banfield - Commissioning and Partnerships (Interim Deputy)		
Executive Member:	Cllr Cheryl Barnard – Children, Young People & Education		
Report author and contact details:	Charlotte Dodds - Commissioning Lead Officer Charlotte.Dodds@nottinghamcity.gov.uk 0115 876 4460		
Other colleagues who have provided input:	Noureen Safdar – Finance Richard Bines – Legal Jo Pettifor – Procurement Cath Cameron-Jones - Strategic Commissioning Manager		
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 type="checkbox"/> Yes
			<input checked="" type="checkbox"/> No
Type of expenditure:	<input checked="" type="checkbox"/> Revenue	<input type="checkbox"/> Capital	
Total value of the decision: £1,541,000 (of which £491,000 is Nottingham City Council spend)			
Section 151 Officer expenditure approval			
Has the spend been approved by the Section 151 Officer? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/a			
Spend Control Board approval reference number: Application submitted.			
Commissioner Consideration			
Has this report been shared with the Commissioners’ Office? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Any comments the Commissioners wish to provide are listed in section 6 below.			
Wards affected: All			
Date of consultation with Executive Member: 28/08/2024			
Relevant Council Plan Key Outcome:			
Green, Clean and Connected Communities			<input type="checkbox"/>
Keeping Nottingham Working			<input type="checkbox"/>
Carbon Neutral by 2028			<input type="checkbox"/>
Safer Nottingham			<input type="checkbox"/>
Child-Friendly Nottingham			<input checked="" type="checkbox"/>
Living Well in our Communities			<input type="checkbox"/>
Keeping Nottingham Moving			<input type="checkbox"/>
Improve the City Centre			<input type="checkbox"/>
Better Housing			<input type="checkbox"/>
Serving People Well			<input checked="" type="checkbox"/>

Summary of issues (including benefits to citizens/service users):

The purpose of this report is to seek approval for the joint commissioning between Nottingham City Council and Nottinghamshire County Council of a Children's Advocacy and Independent Visitor Service. The new service will commence 1 April 2025 with a contract term of 5 years (initial 3 years with option to extend for a further 2 years).

The right to advocacy in England is set out in Section 26A of The Children Act 1989, which states that every local authority shall make arrangements for the provision of assistance to persons who make or intend to make representations or complaints under Section 26. A looked-after child, child in need or care leaver can request an advocate at any time. It also requires a local authority to consider the appointment of an Independent Visitor in respect of a child or young person they look after where it appears it would be in child's best interests to do so.

Government Guidance: 'Prevention of homelessness and provision of accommodation for 16- and 17-year-old young people who may be homeless and/or require accommodation' (2018) dictates that homeless young people age 16 and 17 should be offered independent advocacy during their Joint Housing Assessment (JHA) meeting.

Exempt information: None

Recommendations:

Subject to Nottinghamshire County Council's approval to spend up to £1,050,000 for the purposes of a joint Nottingham City Council and Nottinghamshire County Council Children's Advocacy and Independent Visitor Service, with a maximum contracts value of £1,541,000 and appropriate Spend Control Board approval for Nottingham City spend:

- 1** To approve Nottingham City Councils' spend of up to £491,000 over a maximum 5 year contractual term for the above purpose.
- 2** To delegate authority to the Director of Commissioning and Partnerships or Head of Personalisation, Quality and Contracting as appropriate, on behalf of Nottingham City Council, to:
 - (i) procure, award and enter into a contract / agreement for the above purpose for an initial 3-year period (1 April 2025 - March 2028), with option to extend for a further 2-year period to 30 March 2030;
 - (ii) enter into a Collaboration Agreement with Nottinghamshire County Council for the duration of the above contract, agree and sign the contract documentation relating to the service, save for either agreement being required to be executed as a deed, which shall be executed on behalf of Nottingham City Council by the Director for Legal and Governance / Head of Legal and Governance.

1. Reasons for recommendations

- 1.1 The incumbent provider of the Children's Advocacy and Independent Visitor Service has advised they will not be agreeing to an extension of their contract beyond March 2025 (the contract had provision to run for a +2-year extension from October 2024 until September 2026) therefore a tender is required to secure a new service provider from April 2025 onwards.
- 1.2 All Children in Care, Children in Need and Care Leavers and when children and young people are subject of a Child Protection Plan and the local authority is

considering care proceedings, have the right to an independent advocacy service as defined by The Children's Act 1989 Section 26A.

- 1.3 The provision of an Independent Visitor for Children in Care is a statutory duty under the Children's Act 1989 Section 23ZB.
- 1.4 Government Guidance: 'Prevention of homelessness and provision of accommodation for 16- and 17-year-old young people who may be homeless and/or require accommodation' (2018) recommends that homeless young people aged 16 and 17 should have access to an independent advocate during their Joint Housing Assessment interview process.
- 1.5 The incumbent provider has stated that they were able to make cost efficiencies due to holding contracts with both Nottingham City and Nottinghamshire County. Commissioning a joint service will ensure NCC continue to benefit from the efficiencies which have been achieved through sharing a single service provider with Nottinghamshire County Council.
- 1.6 It has been agreed that Nottingham City will lead the procurement of the service on behalf of both local authorities.

2. **Background (including outcomes of consultation)**

- 2.1 The current Children's Advocacy and Independent Visitor service commissioned in 2022 supports children in care with: issue-based advocacy upon referral, advocates regularly visit children and young people in residential homes (in person visits and frequent visits prioritised for those with complex disabilities and under 10's) Independent Persons for secure accommodation review panels and Independent Visitors (befrienders) for those where it appears it would be in the child's best interest to do so.
- 2.2 Since April 2023, advocacy support has been provided for homeless 16 and 17-year-olds during their Joint Housing Assessment (JHA) Interviews. Government guidance and best practice dictate that independent advocacy should be offered to young people during these critical meetings as they are making decisions about their future housing and care status. This initiative is part of the Council's improvement plan for Children's Services, addressing concerns raised by the Department for Levelling Up, Housing & Communities (DLUHC) Youth Homelessness Focused Visit in October 2021. The visit highlighted that Nottingham City's response to homeless 16/17-year-olds was not compliant with the Government Guidance on the 'Prevention of homelessness and provision of accommodation for 16 and 17-year-old young people who may be homeless and/or require accommodation' (2018). Additionally, an Ofsted visit during the summer of 2022 also expressed concerns about Nottingham City Council's response to homeless 16/17-year-olds.
- 2.3 New statutory guidance for local authorities dated September 2023 'Effective Advocacy for Looked-After Children, Children in Need and Care Leavers' makes clear that those making or intending to make representations under sections 24D and 26 of the Children Act 1989 have a right to advocacy and must be informed of this right when they first come into contact with local authority services, at any time decisions are being made about them, or at points of transition.

- 2.4 In the new guidance, examples of circumstances where children and young people should be offered advocacy include: When a child or young person is the subject of a child protection plan, and the local authority is considering care proceeding. In light of this updated statutory guidance Nottingham City Council needs to ensure children in need, care leavers and children and young people subject to a child protection plan have access to advocacy support as well as children in care.
- 2.5 Prior to 2022 Nottingham City Council and Nottinghamshire County Council had a joint Children's Advocacy contract which meant that we had the same provider delivering advocacy support in Nottingham and Nottinghamshire which created efficiencies. The contracts were split due to Nottinghamshire County Council exploring the option of delivering their advocacy service in house which they later decided against and continued commissioning advocacy support externally. By re-commissioning a new joint Children's Advocacy and Independent Visitor Service to commence in 2025 we can continue these efficiencies by ensuring we secure the same service provider.

Funding

- 2.6 Nottingham City's Children's Advocacy and Independent Visitor service for Children in Care is funded via a block annual payment from the Children in Care budget of £83,200.
- 2.7 Advocacy support for homeless 16- and 17-year-olds is funded via payment by activity from the budget deriving from the Section 17 duty under The Children Act 1989 up to £5,000 per annum due to fluctuating demand.
- 2.8 Advocacy support for children in need and children under a child protection plan has not been identified as a specific need previously and therefore demand is unknown but given the change in statutory duty, this will be included in the contract and funded via payment by activity from the Section 17 budget up to £5,000 per annum to ensure the service is available if required.
- 2.9 Advocacy support for care leavers has not been identified as a specific need previously and therefore demand is unknown but given the change in statutory duty, this will be included in the contract and funded via payment by activity from the Care Leavers budget up to £5,000 per annum to ensure the service is available if required.
- 2.10 Nottinghamshire County Council's contribution of £210,000 per year would comprise: block payment of £200,000 supporting Children in Care including those who are looked after in secure accommodation, Care Leavers, Homeless 16- and 17-year-olds and payment by activity amounts of up to £10,000 supporting Children in Need and children and young people subject to child protection plans).
- 2.11 The overall spend for the entire contract term for Nottingham City Council is £491,000 and for Nottinghamshire County Council is £1,050,000. The total combined cost for the whole 5-year contract term for the City and County is £1,541,000.

Consultation

2.12 Nottingham City Children in Care Council were consulted on the re-commissioning of this service for children in care in 2022. The young people helped formulate a tender question around building relationships with children and young people and marked answers to this question during the tender evaluation. Young people were engaged with extensively less than 2 years ago and gave us a good steer for a 4-year period as the current contract was expected to run until 2026. These views therefore still stand to steer us for the 2024 re-commissioning. Provision of this service adheres to the Council's pledges developed in partnership with the Children in Care Council.

3. Other options considered in making recommendations

3.1 To do nothing - allow our Children's Advocacy and Independent Visitor service contract supporting Children in Care and homeless 16- and 17-year-olds (advocacy only) to terminate on the 31 March 2025 without completing a procurement exercise to secure a new service. This option is not recommended because:

- the local authority has a statutory duty to provide a Children's Advocacy and Independent Visitor service for Children in Care, this statutory duty would be unfulfilled;
- Government guidance recommends that homeless 16- and 17-year-olds should have access to an advocate during the JHA process, the Council would not be compliant with government guidance.

3.2 To procure a Children's Advocacy and Independent Visitor service for Nottingham that only supports Children in Care and Homeless 16- and 17-year-olds and does not contain provision within the specification and contract to support Children in Need, Care Leavers and child and young people subject to child protection plans. This option is not recommended because updated Government Statutory Guidance September 2023 'Effective Advocacy for Looked-After Children, Children in Need and Care Leavers' clearly states these children and young people have a right to access advocacy support as well as looked-after children under the Children Act 1989. The Council would not be compliant with government guidance.

3.3 To procure a Children's Advocacy and Independent Visitor Service for Nottingham City only. This option is not recommended. There is a risk City and County would secure contracts with different organisations providing Children's Advocacy and Independent Visitor services. This would mean that the current and future efficiencies of the joint approach would be lost, and this would not achieve Best Value and would likely see an increase in the cost of the service, or the service offer would need to be reduced negatively impacting vulnerable children and young people.

4. Consideration of Risk

4.1 Failure to re-commission a Children's Advocacy and Independent Visitor service, when the current contract ceases 31 March 2025, is a risk to Nottingham City Council as delivery of this service is a statutory duty to support Children in Care, Children in Need, Care Leavers and children and young people subject to child protection plans under The Children's Act 1989

and is recommended by Government Guidance 'Prevention of homelessness and provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation' (2018) to support homeless 16 and 17 year olds. There is a relatively limited provider market and therefore this constitutes a risk that we will not be able to award the contract.

4.2 Any delay in tendering may impact on a smooth transition. The incumbent provider has served notice to end their current contract without utilising the full extension period leading to the procurement process being undertaken to secure a new service provider from April 2025 onwards. Identification of a new service provider may mean TUPE will be undertaken and timely transitions and mobilisation will be required to ensure seamless support for children and young people.

5. **Best Value Considerations**

5.1 Best Value is being addressed through leveraging this joint approach to commissioning a joint Children's Advocacy and Independent Visitor service Nottingham City and Nottinghamshire County children and young people. Nottingham City Council jointly re-commissioning this service provides the following benefits:

- continued benefit of economic efficiencies achieved by the City and County sharing the same service provider. For example, some City and County young people reside in the same children's homes, sharing the same service provider means one advocate can visit a children's home to support both City and County young people;
- joint learning, collaborative working and dissemination of best practice.

5.2 Where demand for service is not clear, a payment by activity element has been brought in to ensure that payment reflects utilisation. Offering a block contract for the majority of the service enables a provider to have guaranteed income to ensure a core service is available at all times. The tender process will secure Best Value through a competitive process between providers where quality and price are evaluated. Best Value will be secured on an ongoing basis through regular quarterly contract monitoring to ensure maximum service delivery under the block contract.

6. **Commissioner comments**

6.1 Commissioners have noted the content of the reports and have no further comments

7. **Finance colleague comments (including implications and value for money/VAT)**

7.1 The decision seeks to tender & approve a 5-year contract to a maximum value of £0.098m per annum for Children's Advocacy & Independent Visitor Service for Nottingham City. The current annual budget provision in the Contract Payments area for this service is earmarked at £0.083m. This is a 4% uplift to the current contract and future contract.

7.2 There is an element of payment by activity of up to £15K per annum. Procurement will not proceed unless the tender meets the contract envelope value. Therefore, there should be sufficient budget for this proposal in this and

future years. Future MTFP decisions will need to consider the future contract values to ensure the budget is retained to meet the contract.

Noureen Safdar, Senior Commercial Finance Business Partner – 12/08/2024

8. **Legal colleague comments**

- 8.1 Article 12 of the UN Convention on the Rights of the Child, outlines the right of the child to be heard. The right to advocacy in England is set out in Section 26A of The Children Act 1989, which states that every local authority shall make arrangements for the provision of assistance to persons who make or intend to make representations under section 24D; and children who make or intend to make representations under section 26. This right to advocacy (includes representation) applies to looked-after children, children in need and care leavers.
- 8.2 A looked-after child, child in need or care leaver can request an advocate at any time. There are, however, key points in their lives when, due to a significant or unexpected change, or an identifiably high level of need, having an advocate will ensure that their views, wishes and feelings are listened to and considered in decisions.
- 8.3 Advocacy can also assist children and young people when they wish to make a complaint under the Children Act 1989. This is supported by statutory guidance issued under section 7 of the Local Authority Social Services Act 1970, which requires local authorities with social services functions to act under the general guidance of the Secretary of State. Only in exceptional cases may local circumstances justify a variation.
- 8.4 The provision of an Independent Visitor for Children in Care is a statutory duty under the Children Act 1989 Section 23ZB. The Council also has duties under Part 3 of the Children Act 1989 and Part 7 of the Housing Act 1996 to secure or provide accommodation for homeless 16- and 17-year-old young people. Supporting guidance recommends that this group has access to an independent advocate during their housing assessment process. The guidance is issued jointly by the Secretary of State for Education and the Secretary of State for Housing, Communities and Local Government under section 7 of the Local Authority Social Services 1970 and section 182 of the Housing Act 1996. Section 7 of the 1970 Act requires local authorities, in exercising their social services functions, to act under the general guidance of the Secretary of State; unless there are exceptional reasons in individual cases authorities are expected to comply with this guidance. Section 182 of the 1996 Act requires housing authorities and social services authorities, in the exercise of their functions relating to homelessness and the prevention of homelessness, to have regard to such guidance as may from time to time be given by the Secretary of State.
- 8.5 Section 26A(5) of the Children Act 1989 requires local authorities to give such publicity to their arrangements for the provision of advocacy services as they consider appropriate. Section 26(8) also requires local authorities to give appropriate publicity to their procedure for considering representations. However, this is built upon in the statutory guidance such that Local authorities should have a programme of regularly updating information and publicity on advocacy services to staff and foster carers to ensure that new staff and carers are able to inform children and young people properly of the

support they can access. Publicity on children's legal rights and advocacy should be widely disseminated across children and young people's services, and included in routine meetings, staff inductions, supervision and training e.g., training for foster carers or social workers. Commissioning organisations and staff need to positively promote the use of advocacy services and feel confident in using and recognising the need for a child or young person to acquire an independent advocate. Children and young people should be encouraged to use advocacy services where necessary and there should not be any repercussions for doing so.

- 8.6 The aforementioned statutory duties are also underpinned by secondary legislation in the form of regulations, such as the Representations Procedure (Children) Regulations 1991 (S.I. 1991/894) as amended, that must also be complied with.
- 8.7 The Representations Procedure (Children) Regulations 1991 are made under section 26(6) of the Children Act 1989. Under regulation 10 of the Representations Procedure (Children) Regulations 1991, local authorities are required to monitor the arrangements that they have made with a view to ensuring that they comply with the Regulations by keeping a record of each representation received, the outcome of each representation and whether the time limits set out in the Regulations were complied with. For the purposes of such monitoring, local authorities are required to compile annual reports on the operation of their complaint's procedure. Regulation 5 of the Advocacy Services and Representations Procedure (Children) (Amendment) Regulations 2004 also requires local authorities to monitor the steps that they have taken with a view to ensuring that they comply with the regulations in particular by keeping a record about each advocate appointed under the local authority's arrangements for the provision of advocacy services under section 26A(1) of the Children Act 1989.
- 8.8 The independent status of advocates is essential for them to be able to act effectively on behalf of the child or young person. The National Standards for the Provision of Children and Young People's Advocacy Services set out Government policy on the independence of advocacy services. Advocacy will only be used if children and young people are confident that advocates are acting exclusively on their behalf and have no apparent conflicting interests and pressures. Therefore, the advocacy or children's rights service should, as far as possible, be funded and managed in a way that ensures independence from the commissioning organisation.
- 8.9 Failure to re-commission a Children's Advocacy and Independent Visitor service, when the current contract ceases 31 March 2025, would risk the Nottingham City Council failing to deliver a service in accordance with its statutory duty.
- 8.10 It is understood the joint re-commissioning and collaborative working between the two local authorities led by Nottingham City Council, seeks to achieve efficiencies as detailed in this report.
- 8.11 Nottingham City Council will lead the procurement and both Councils will contribute to the development of the Collaboration Agreement and Service Agreement arrangements. Legal services will support the service area throughout the process as and when required.

8.12 The procurement of the required public service contract, tender and award must comply with Public Contract Regulations 2015 or new Procurement Act 2023 procurement regime if that applies at the commencement of the procurement exercise. In addition, compliance with the Council's own Contract Procedure Rules must be achieved.

8.13 Whilst the new service agreement will need to provide for matters such as insurance, limitation of liability, termination, TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246)), have relevant data protection provisions in compliance with GDPR obligations, and ensure that the Local Authority can meet its monitoring obligations, the exiting contract arrangements with the current provider of services must also be abided by when ending the relationship with the current provider including obligations relating to TUPE and employment matters and information on retendering.

8.14 The proposals in this report otherwise raise no significant legal issues and are supported.

Richard Bines, Solicitor, Contracts and Commercial Team - 13.08.2024

9. **Other relevant comments**

Procurement

9.1 This report proposes relates to the joint commissioning between Nottingham City Council and Nottinghamshire County Council of a Children's Advocacy and Independent Visitor Service from April 2025. The proposed service will meet the Council's statutory obligations under the Children's Act 1989 for the provision of children's advocacy and Independent Visitor services. It is necessary to re-procure this provision because the incumbent provider for the City has decided not to continue with an extension of the current contract from April 2025.

9.2 It is proposed that Nottingham City Council will lead the joint procurement on behalf of the City and County, through an open tender process compliant with the UK Procurement Regulations and NCC Contract Procedure Rules. Joint commissioning to secure one service provider for both authorities will deliver economic efficiencies and service delivery benefits.

9.3 Best value will be ensured through the competitive tender process with tenders evaluated based on cost and quality. A block contract will ensure viability and availability of a core service at all times, while the elements of payment by activity will mitigate risk to the Council where demand is not certain.

Jo Pettifor, Category Manager - 9 August 2024

10. **Crime and Disorder Implications (If Applicable)**

10.1 N/A

11. **Social value considerations**

11.1 This service will be procured with the requirement for providers to deliver additional social value. For example, recruiting local people, providing volunteering opportunities developing skills within the local communities and raising awareness

of Advocacy and Independent Visitors with other professionals and the wider social care workforce.

12. Regard to the NHS Constitution (If Applicable)

12.1 N/A

13. Equality Impact Assessment (EIA)

13.1 An EIA has been undertaken and due regard will be given to any implications identified in it.

14. Data Protection Impact Assessment (DPIA)

14.1 A DPIA has been undertaken and due regard will be given to any implications identified in it.

15. Carbon Impact Assessment (CIA)

15.1 A CIA is not required because there are no carbon impacts arising from the work to be undertaken.

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

16.1 None.

17. Published documents referred to in this report

17.1 Ministry of Housing, Communities & Local Government and the Department for Education: Prevention of homelessness and provision of accommodation for 16 and 17 year old young people who may be homeless and/or require accommodation: [Provision of accommodation for 16 and 17 year olds who may be homeless and/or require accommodation \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/642223/provision-of-accommodation-for-16-and-17-year-olds-who-may-be-homeless-and-or-require-accommodation.pdf)

17.2 Department for Education: Effective Advocacy for Looked-After Children, Children in Need and Care Leavers statutory guidance for local authorities: [Revised Statutory Guidance on Effective Advocacy for Local Authorities.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/642223/effective-advocacy-for-looked-after-children-children-in-need-and-care-leavers-statutory-guidance-for-local-authorities.pdf)