

**COMMISSIONING AND PROCUREMENT SUB-COMMITTEE/STRATEGIC
REGENERATION COMMITTEE – 10/2/16**

Subject:	Commissioning of Statutory Advocacy Services		
Corporate Director(s)/ Director(s):	Candida Brudenell, Strategic Director/Assistant Chief Executive		
Portfolio Holder(s):	Councillor Alex Norris, Portfolio Holder for Adults and Health		
Report author and contact details:	Rasool Gore rasool.gore@nottinghamcity.gov.uk 0115 8762299		
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 £1,000,000 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
Total value of the decision: See Exempt Appendix 1			
Wards affected: ALL	Date of consultation with Portfolio Holder(s): 16/12/15		
Relevant Council Plan Key Theme:			
Strategic Regeneration and Development			<input type="checkbox"/>
Schools			<input type="checkbox"/>
Planning and Housing			<input type="checkbox"/>
Community Services			<input type="checkbox"/>
Energy, Sustainability and Customer			<input type="checkbox"/>
Jobs, Growth and Transport			<input type="checkbox"/>
Adults, Health and Community Sector			<input checked="" type="checkbox"/>
Children, Early Intervention and Early Years			<input type="checkbox"/>
Leisure and Culture			<input type="checkbox"/>
Resources and Neighbourhood Regeneration			<input type="checkbox"/>
Summary of issues (including benefits to citizens/service users):			
The Council is legally bound to provide advocacy services under the Mental Health Act 2005, Mental Health Act 2007 and the Care Act 2014. This report presents proposals for the statutory advocacy service taking into account the additional pressures resulting from new legislative requirements (Care Act 2014) and case law (Cheshire West implications).			
Exempt information:			
An appendix to the report is exempt from publication under paragraph 3 of Schedule 12A to the Local Government Act 1972 because it is not in the public interest to disclose this information as it contains information relating to the negotiation of service budgets.			
Recommendation(s):			
1 Approval is given to commission an advocacy service in accordance with the model detailed in paragraphs 2.11-2.17.			
2 Approval is given to enter into a joint tender process with Nottinghamshire County Council, Nottingham City Clinical Commissioning Group (CCG) and County CCG's in order to procure this model with Nottinghamshire County Council acting as the lead of the procurement process and approval is given to delegate authority to the Director of Adult Social Care to award and sign and enter into a contract following completion of the tender process.			
3 Approve the budget and spend on statutory advocacy provision set out in Exempt Appendix 1.			

1 REASONS FOR RECOMMENDATIONS

- 1.1 The Council is legally bound to provide an advocacy service under the Mental Health Act 2005, Mental Health Act 2007, Care Act 2014 and in line with case law.
- 1.2 The current model is unable to respond to the new legislative requirements and therefore a new model had to be developed in order to meet the increased responsibilities.
- 1.3 Due to the additional financial pressures presented by legislative change the Council will no longer be able to support provision of non-statutory advocacy.
- 1.4 Jointly commissioning the service with Nottinghamshire County Council and City CCG's and County CCG's will deliver increased value for money for the Council as well as responding to citizen's request to have one model across Nottingham City and Nottinghamshire.

2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

- 2.1 The Council is legally bound to have the following types of statutory advocacy; Independent Mental Capacity Advocates (Mental Health Act 2005); Independent Mental Health Advocates (Mental Health Act 2007); Paid Representatives (Deprivation of Liberty Safeguards (DOLS), NHS Complaints Advocacy and Advocacy under the Care Act 2014.
- 2.2 The current advocacy service is jointly commissioned by Nottingham City Council, Nottinghamshire County Council, Nottingham City CCG and CCGs in Nottinghamshire. The County Council is the lead commissioner of the service. In 2012 the contract was awarded to POhWER and the service, called 'Your Voice, Your Choice', commenced in April 2012.
- 2.3 The service was primarily funded by Nottingham City and Nottinghamshire County Council with some additional funding from the CCGs. As well as meeting the identified statutory responsibilities, the service provided substantial levels of non-statutory advocacy in order to give a voice to vulnerable people. Referrals were made to a central hub and were triaged to identify whether, statutory, non-statutory or supported signposting was required.
- 2.4 POhWER is responsible for providing all statutory advocacy services, (outlined in paragraph 2.2). POhWER is also responsible for the delivery of non-statutory advocacy which they subcontract to Age UK. The referral hub is shared with a range of other advocacy services across the country and is based in Birmingham. The actual advocates are locally based.
- 2.5 Since the commencement of the current contract in April 2012, legislative and policy changes have placed additional requirements on local authorities for the provision of advocacy services. This related to the transfer of responsibility for IMCA provision from the CCG's to the local authority and the additional element of health complaints advocacy which had formally been commissioned nationally.

2.6 In April 2015 the contract was extended for a further 18 months. The new contract included two additional pilots to reflect the new advocacy provision required by the Care Act 2014 and to respond to significant pressures in respect of the Cheshire West Deprivation of Liberty ruling. In addition, given the inequality of funding between the City and the County based on the utilisation of the service, it was agreed to increase the level of the City's contribution.

2.7 A procurement process is now being developed for a new advocacy service. It was not possible to extend the existing contract further due to the additional value of the service and the need to develop a new model.

2.8 In addition to the funding that was required to meet the two new pilots, further funding pressures have been identified. These relate to:

- Continuing growth in relation to advocacy requirements relating to Cheshire West. This impacts on the numbers of IMCA and Paid Representatives required. Despite additional funding, there are still not sufficient resources to meet this need.
- Potential growth of Care Act advocacy. National guidance suggests that the demand for Care Act advocacy will continue to grow over a 5 year period. Currently there is almost no call upon this provision, but the capacity for future growth needs to be built in.
- Potential growth of IMHA provision. It is proposed that instead of opting in to advocacy, mental health patients on a section will have to opt out of this service.
- A further increase is required from the City to ensure that the service costs fully represent the split in utilisation between the City and the County.

2.9 As part of the development of the service specification for the new service, a series of consultations and discussions took place:

- An on-line survey
- Consultation events, face to face discussions took place with service users, the SPLAT board, carers and staff in the statutory and voluntary sectors.

2.10 The key messages that have emerged are:

- People have found the current centralised hub difficult to access and that it has lacked local knowledge
- Non statutory advocacy is seen as a valuable resource and has provided support to particularly vulnerable citizens
- Effective and accessible information and advice reduces the need for advocacy
- There is a role for low level advocacy from a range of support agencies as well as from peers who have had similar experiences
- A particularly vulnerable group are individuals who are unhappy with the care that they receive, either from family or paid workers
- Deaf citizens require advocates who can sign directly rather than going through a third party.

2.11 Given the increasing cost of statutory advocacy and the general financial pressures, it was recognised that the non-statutory element of the service would need to be reviewed. Whilst recognising feedback from consultation the review concluded that due to the financial pressures it was no longer feasible for the Council to carry on funding non-statutory advocacy.

2.12 It has therefore been decided that local authority funding will be utilised for statutory advocacy only. Any non-statutory advocacy funding will be funded

through the CCGs who do not have any statutory obligations with respect to this service. This will include advocacy provision for voluntary patients on mental health wards as well as additional funding to provide support to the Transforming Care cohort.

- 2.13 There will be one overarching specification and one lead provider. Whilst the provider may sub contract some elements of the service it is important that there is flexibility of role from the advocates, particularly between Care Act advocate, and IMCAs and IMHAs and that there is flexibility as to how the service manages shifting pressures of demand across the different strands.
- 2.14 The service will not be required to have a local office, but will need to have locally based staff to provide both referral and advocacy functions. Where an individual is not eligible for advocacy from the service, the referral element of the service will provide supported signposting to local agencies.
- 2.15 Due to the expected increase in demand, the service will receive an element of block funding and an element of cost and volume funding. The finances identified should be sufficient to meet the growth in need over the life of the contract.
- 2.16 An additional element will be built in to the start of the contract to support the development of self-help, peer support and other low cost options within the community in order to mitigate the removal of the non-statutory element.

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 3.1 To continue to provide the same level of statutory and non-statutory advocacy. Given the significant pressures in relation to statutory advocacy, there are insufficient funds to continue to provide the same level of service.
- 3.2 To commission services separately from Nottinghamshire County Council. This would lead to a considerable increase in costs due to economies in scale. Working with the County enables advocates to work more efficiently in hospitals and residential and nursing homes which are used by City and County residents.
- 3.3 To bring the service in-house. Legally, advocacy has to be an independent function, separately provided from the local authority.

4 FINANCE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)

- 4.1 Finance comments are provided in Exempt Appendix 1.
- 4.2 A jointly commissioned service with partners will ensure the council continues to achieve value for money by procuring services that meets the needs of local people through the most economic, efficient and effective means.

5 LEGAL AND PROCUREMENT COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND INCLUDING LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)

- 5.1 The Council is required to retender its current Advocacy contract due to the current contract expiring and a need to remodel the service. Due to financial pressures, it has been determined that this procurement process shall provide for the statutory

advocacy service only but other non-statutory services will be assisted by supported sign posting and use of the Care Act advocacy.

The value of the proposed contract will be over the EU procurement threshold therefore a full EU compliant tender will be needed. This will be conducted in partnership with Nottinghamshire County Council who will be the Lead for this process and the City and County CCGs. The contract will be issued to a single provider, with provision for sub-contracting elements of the service, on a 3+2+2 basis which will give break clauses at appropriate points for reviewing the service. Details of the basis on which the contract will be let are still being finalised and the County has issued a PIN (Prior information Notice) to the market to enable soft market testing to take place. This will ensure an informed approach in the way the contract is let, is taken.

The Council will be involved in preparation of the specification for the procurement and in the evaluation process to identify the most suitable provider for this service and a separate contract will be entered into between the chosen provider and each authority.

6 STRATEGIC ASSETS & PROPERTY COMMENTS (FOR DECISIONS RELATING TO ALL PROPERTY ASSETS AND ASSOCIATED INFRASTRUCTURE (STRATEGIC REGENERATION COMMITTEE REPORTS ONLY)

6.1 Not applicable.

7 SOCIAL VALUE CONSIDERATIONS

7.1 City Council commissioners will work with Nottinghamshire County Council colleagues who are leading the commissioning and procurement of this service to ensure that good employer requirements are written into the service specification and that marking of the tender process takes account of employment terms.

8 REGARD TO THE NHS CONSTITUTION

8.1 Not applicable.

9 EQUALITY IMPACT ASSESSMENT (EIA)

9.1 Has the equality impact of the proposals in this report been assessed?

Yes



Attached as Appendix 2, and due regard will be given to any implications identified in it.

10 LIST OF BACKGROUND PAPERS RELIED UPON IN WRITING THIS REPORT (NOT INCLUDING PUBLISHED DOCUMENTS OR CONFIDENTIAL OR EXEMPT INFORMATION)

10.1 None.

11 PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT

11.1 Delegated decision (ref 1881) – Advocacy Provision-contract extension & variation.

12 OTHER COLLEAGUES WHO HAVE PROVIDED INPUT

- 12.1 Clare Gilbert – Lead Commissioning Manager
- Kate Lowman – Procurement Category Manager Social Care
- Darren Revill – Finance Analyst
- Dionne Screator - Solicitor