

**REPORT TO CABINET**

**9 September 2020**

<b>Subject:</b>	<b>Consultation and Procurement of Advocacy Contracts</b>
<b>Presenting Cabinet Member:</b>	<b>Cabinet Member for Living Healthy Lives Councillor Farut Shaeen</b>
<b>Director:</b>	<b>Director – Prevention and Protection Neil Cox</b>
<b>Contribution towards Vision 2030:</b>	
<b>Key Decision:</b>	Yes
<b>Cabinet Member Approval and Date:</b>	Councillor Shaeen
<b>Director Approval:</b>	Neil Cox – Director – Prevention and Protection
<b>Reason for Urgency:</b>	Urgency provisions do not apply
<b>Exempt Information Ref:</b>	Exemption provisions do not apply
<b>Ward Councillor (s) Consulted (if applicable):</b>	Ward Councillors have not been consulted on this report.
<b>Scrutiny Consultation Considered?</b>	Scrutiny have not been consulted
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## **DECISION RECOMMENDATIONS**

### **That Cabinet:**

1. Authorises the Director – Prevention and Protection to undertake a procurement exercise and award a contract to the successful tenderer for the following 4 Advocacy services:
  - Independent Mental Capacity Advocate / Deprivation of Liberty (IMCA/ DOLS) for a two year period with the option to extend for a further year at a cost of £99,068 per annum;
  - Independent Mental Health Advocacy (IMHA) and Inpatient Mental Health Advocacy for a two year period with the option to extend for a further year at a cost of £49,531 per annum;
  - NHS Complaints Advocacy Service for a two year period with the option to extend for a further year at a cost of £41,355 per annum;
  - Care Act and Generic Advocacy Contract for a two year period years with the option to extend for a further year and the non-statutory Generic Advocacy element for a period of 1 year (with 2 options of 1 year) to allow review and engagement with stakeholders on the future of this service at a cost of £100,195 per annum.
2. Approves a process of review and engagement with relevant stakeholders in respect of the future of the non-statutory generic advocacy service element of these contracts, the result of which will be presented back to Cabinet if required.
3. Approves an exemption be made to rule 8.7 of Procurement and Contract Procedure Rules 2018-19 to allow the contract to be awarded to the successful tenderer in the event that the required minimum number of tenders are not received.
4. Authorises the Director – Prevention and Protection, in consultation with the Cabinet Member for Living Healthy Lives, to make variations to the contract up to a maximum of 10% of the contract value, should they be necessitated.

## **1 PURPOSE OF THE REPORT**

- 1.1 This report seeks authorisation for the re-procurement of 4 advocacy services under one contract to cover all currently commissioned statutory advocacy services, to replace the existing contracts which expire in March 2021, with no option to extend.

- 1.2 If approved the new contract will be procured through a tender process to commence from 1 April 2021 and will run for 2 years with the option to extend for a further 1 year, unless terminated in accordance with the Conditions of the Contract.
- 1.3 The new contract will also include the non-statutory generic advocacy service, but this will only be contracted for a period of 12 months starting 1 April 2021 and ending 31 March 2022, to enable a review of the service to take place. There will be two further 1 year extension options which may be taken, depending on the outcome of the review.
- 1.4 This report therefore also seeks approval from Cabinet to commence a review and engagement process involving relevant stakeholders, including service users, on the future of the non-statutory generic advocacy service.
- 1.5 Once the review and engagement process has been completed, a further report will be presented to Cabinet to set out the plans for the future of the generic advocacy service in Sandwell if required.
- 1.6 The report also seeks authority for the Director of Prevention and Protection to award the contracts to the successful bidders.
- 1.7 The advocacy services are of a specialist nature, and there is a limited market of providers at local and national level. This report requests an exemption to rule 8.7 of Procurement and Contract Procedure Rules 2018-2019 to allow contracts to be awarded to the successful bidders should the minimum number of tenders not be received.

## **2 IMPLICATION FOR VISION 2030**

- 2.1 This report positively contributes to 2 of the Councils 2030 vision as follows:

*“Ambition 1 - Sandwell is a community where our families have high aspirations and where we pride ourselves on equality of opportunity and on our adaptability and resilience”.*

Advocacy services have an important role in ensuring the views of vulnerable people are heard. This contributes to equality of opportunity, adaptability to new challenges, and resilience.

*“Ambition 2 - Sandwell is a place where we live healthy lives and live them for longer, and where those of us who are vulnerable feel respected and cared for”.*

- 2.2 Early advocacy intervention helps to prevent crises, or crises worsening, and thus increases the feeling of being supported and respected by service users and contributes to healthier lives and reduced dependence on health and social care services in the longer term.

### **3 BACKGROUND AND MAIN CONSIDERATIONS**

- 3.1 Cabinet approved the award of five contracts for advocacy services on 2nd July 2015. These were:
- 1 Generic and Care Act Advocacy
  - 2 Independent Mental Capacity Advocacy / IMCA Deprivation of Liberty Safeguards (IMCA/IMCA DOLS)
  - 3 Independent Mental Health Advocacy (IMHA) with additional Inpatient Mental Health Advocacy service
  - 4 NHS Complaints Advocacy, and
  - 5 Advocacy Support Service
- 3.2 These contracts were for 4 years each. All started 1 April 2016 and were due to expire 31 March 2020.
- 3.3 The Council has statutory responsibilities to provide or commission four types of advocacy in compliance with the following legislation:
- Mental Capacity Act 2005 and Mental Capacity Amendment Act 2019 for IMCA/IMCA DOLS
  - Mental Health Act 1983 for IMHA
  - Health and Social Care Act 2012 for NHS Complaints Advocacy
  - Care Act 2014 for Care Act Advocacy
- 3.4 Given the expected introduction of the Liberty Protection Safeguards (LPS) in October 2020, in response to the introduction of the Mental Capacity Amendment Act, the Directors of Adult Social Care and Resources approved a one-year direct award of the first four of the contracts listed above.
- 3.5 The fifth contract, the Advocacy Support Service, was unaffected by the introduction of the LPS, and has been successfully procured and is delivered by Sandwell Advocacy.
- 3.6 Due to COVID19 the Government's plans to implement the LPS were delayed until April 2021 and there is no option to extend the contract. Officers feel a further direct award is not appropriate given the a) the contract values involved and b) the length of time the current contract has been in place without market test and that we have sufficient time to undertake a formal procurement process.

- 3.7 The four advocacy contracts need to be re-procured to ensure compliance with the Council's Procurement and Contracts Procedure Rules and the Public Contracts Regulations 2015 and with European procurement guidelines.
- 3.8 The Council also has a statutory responsibility to have the four statutory elements of advocacy provision in place.
- 3.9 The new arrangements will look to include all four statutory advocacy services under one contract, and one non-statutory Generic advocacy service.
- 3.10 The Care Act Advocacy contract which is a statutory requirement also includes a Generic Advocacy element. To ensure that the Council can continue to meet its statutory responsibilities without increasing pressure on its financial resources, a review is being proposed to look at the purpose and eligibility criteria for the non-statutory Generic advocacy element with a view to bringing it closer in line with the purpose and criteria for Care Act Advocacy.

#### 4 THE CURRENT POSITION

- 4.1 The four elements of advocacy being retendered are described in the table below:

<b>Contract:</b>	<b>Contract Value:</b>	<b>Description:</b>
Care Act and Generic Advocacy Contract	£100,195 per annum	<p>The Care Act Advocacy supports adults who have “substantial difficulty” with fully engaging with assessment, support planning and care review processes, or safeguarding, and do not have an appropriate representative. They have a legal right to advocacy under the Care Act 2014.</p> <p>The non-statutory Generic Advocacy Service provides issue-based advocacy for Sandwell residents in relation to Children in Care, Housing, Immigration and other issues.</p>
Independent Mental Health Advocacy (IMHA) and Inpatient Mental Health Advocacy	£49,531 per annum	The IMHA service is a legal right under the Mental Health Act for any adult who is detained in a secure Mental Health setting and those who have been provisionally discharged from hospital, those on supervised

		<p>Community Treatment Orders, or voluntary patients who are considering serious medical treatment because of a mental health condition.</p> <p>This contract also includes a non-statutory mental health inpatient service, which delivers issue-based advocacy for inpatients with mental health needs.</p>
Independent Mental Capacity Advocate / Deprivation of Liberty (IMCA/ DOLS).	£99,068 per annum	<p>The IMCA advocacy service supports people over the age of 16 who have been assessed by a doctor or social worker as lacking mental capacity to make a key decision in their lives, such as a move to supported living or to have serious medical treatment - because of mental health condition, dementia, learning difficulties, a stroke or brain injury. This is a legal right for those who lack mental capacity to make a key decision and who do not have an appropriate family member or friend to represent their views.</p> <p>If a service user is subject to a Deprivation of Liberty Safeguards (DOLS) process, then the IMCA undertakes an IMCA/DOLS role – this is to help the decision maker to reach a decision about whether or not it is in the best interests of the person to be legally deprived of their liberty or not, and if so, for how long and using what arrangements.</p>
NHS Complaints Advocacy Service	£41,355 per annum	<p>The NHS Complaints Advocacy Service is a free and independent service that helps people to make a complaint about the National Health Service (NHS), including hospitals, GPs, dentists, opticians, and NHS funded placements in care homes.</p>

- 4.2 The Mental Capacity Amendment Act was given Royal Assent in May 2019. The Government originally intended to start LPS on 1 October 2020, but due to feedback from the health and social care sector on the pressures they face because of Covid19 the Government has recently announced that they “now aim for full implementation of LPS by April 2022”.
- 4.3 There will be a requirement for the Council to ensure that we include sufficient flexibility within the contract to enable the implementation of any changes because of the introduction of the LPS. The new contract will provide the Council with sufficient time to fully understand the impact of the LPS changes to Advocacy in terms of volume and demand.
- 4.4 The LPS will also require significantly more alignment between Health and Social Care so is an excellent opportunity to engage more effectively with health services around the delivery and function of IMCA and other statutory advocacy services. This will be done over the initial 2 years of the contract, and this can only be completed when the Code of Practice is published.

## **5 CONSULTATION (CUSTOMERS AND OTHER STAKEHOLDERS)**

- 5.1 The proposed review and engagement in respect of Generic Advocacy will involve existing service users, staff and wider stakeholders, and will be conducted in line with Council policy.
- 5.2 Staff and service users will be supported throughout the review and engagement process, in line with good practice learned from similar exercises done before.
- 5.3 This will be undertaken in a 12-week consultation period which will support engagement with service users and services / staff who refer to generic advocacy.

## **6 ALTERNATIVE OPTIONS**

- 6.1 A range of options were considered including extending all 4 contracts for a further year, the option to retender all four contracts separately, and the option to provide advocacy provision in house. The latter was discounted as statutory advocacy needs to be independent of the Council.

- 6.2 The preferred option as presented in this report is to retender all four elements of statutory advocacy under one contract for a period of 2 years with an option of a further 12 months. This partly is due to the Council's experience that there is significant cross over between Care Act, IMCA and IMHA advocacy, and the current arrangements which see all three forms of advocacy being provided by the same provider allows for continuity for the service user and efficiency in terms of referral, case management and reporting / contract management.

## **7 STRATEGIC RESOURCE IMPLICATIONS**

- 7.1 The annual budget for the Care Act/Generic, IMCA and NHS complaints services is £239,600. This will be found from the existing programme budget. Funding for the IMHA service was transferred from Department of Health grant received by the Council back in 20215/16. The IMHA service will be funded through the Better Care Fund at an annual cost of approximately £50k a year.
- 7.2 Although the intention is to retender for the four elements within the existing budget, the requirement to provide the four elements of advocacy provision is a statutory requirement and should the introduction of the LPS create additional demand for advocacy services, then additional resources may need to be found.
- 7.3 The fifth Advocacy Support Service contract has already been procured and the annual cost is approximately £12k per year.

## **8 LEGAL AND GOVERNANCE CONSIDERATIONS**

- 8.1 Provision of these advocacy services is a statutory responsibility apart from the Generic advocacy which will be subject to review.
- 8.2 The new statutory advocacy contract will be fully compliant with the Care Act 2014, the Mental Health Act 1983, the Mental Capacity Act 2005, and the Health and Social Care Act 2008, and the Mental Capacity Amendment Act 2019, the Coronavirus Act 2020, and any other changes in legislation or guidance during the contract. The generic contract is not legally required.

## **9 EQUALITY IMPACT ASSESSMENT**

- 9.1 An Equality Impact Assessment has been completed as part of the Cabinet report process to identify if there are any adverse impacts or issues of concern for protected groups because of the proposals in this report.



9.2 This will be maintained and updated during the engagement process and will form part of any further report to Cabinet

## **10 DATA PROTECTION IMPACT ASSESSMENT**

10.1 This report does not relate to the collection of personal information and therefore a data protection impact assessment is not required.

## **11 CRIME AND DISORDER AND RISK ASSESSMENT**

11.1 The contracts already include requirements around safeguarding, and this will not change. The re-procurement of the IMCA and Care Act advocacy will ensure that more people undergoing safeguarding cases are able to access these services and are represented.

11.2 The Corporate Risk Management Strategy has been complied with to identify and assess the significant risks associated with this proposal.

11.3 The risks have been recorded in a Risk Register and will be monitored on a regular basis, with risks being escalated as required. Based on the information provided, it is the officers' opinion that for the significant risks that have been identified, arrangements are in place to manage and mitigate these risks effectively.

## **12 SUSTAINABILITY OF PROPOSALS.**

12.1 The annual budget for the 3 advocacy services is £239k which will be found from existing programme budget and the £50k budget for the IMHA service will be funded through the Better Care Fund.

## **13 HEALTH AND WELLBEING IMPLICATIONS (INCLUDING SOCIAL VALUE)**

13.1 The re-procurement will result in the continuation of services which, it is expected, will be effectively delivered to improve the health and wellbeing of the service users. The new services will also be required to evidence social value to the local community in terms of increased awareness of advocacy, engagement activities and recruitment and training of local volunteers.

## **14 IMPACT ON ANY COUNCIL MANAGED PROPERTY OR LAND**

14.1 There is no impact on any council managed property or land because of the proposals outlined in this report.

## **15 CONCLUSIONS AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS**

15.1 Approval is sought to procure by competitive tender:

- the IMCA, IMHA, Care Act, Community and NHS Complaints services, using one contract, to cover 2 years, with an option to extend for one year
- the generic advocacy service to cover one year to allow the consultation to be done, and recommendations to be implemented, with two 1-year options to extend to align with the remainder of the contract if needed.

15.2 This report also seeks approval to commence a consultation on proposed changes to generic advocacy in Sandwell. When the consultation has been completed, a further report will be submitted to Cabinet setting out detailed proposals for this service.

## **16 BACKGROUND PAPERS**

None

## **17 APPENDICES:**

None

**Neil Cox**  
**Director – Prevention and Protection**