

## CABINET

13 December 2022

<b>Title:</b> Contract for the Provision of an Integrated Statutory Advocacy Hub	
<b>Report of the Cabinet Member for Adult Social Care and Health Integration</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> No
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<b>Accountable Director:</b> Chris Bush, Commissioning Director, Care and Support	
<b>Accountable Strategic Director:</b> Elaine Allegretti, Strategic Director, Children and Adults	
<b>Summary:</b> <p>Advocacy can play a vital role in improving health and wellbeing by empowering people to take control of their lives and helping them make better informed decisions about issues affecting their health and well-being. At a practical level, the support of an advocate can also help improve the effectiveness of treatment and, in some cases, help early intervention or prevent the need for treatment and so ensuring the best use of resources.</p> <p>Advocacy is, by its nature, a support services touching a wide range of client groups including older people and those with mental health, a learning disability, dementia, substance misuse and physical disability. Advocacy services can provide a voice or facilitate involvement for those from vulnerable client groups who otherwise may have difficulty engaging in the care and support process. Advocates may also represent a person's best interests on their behalf if they lack the capacity to make decisions for themselves.</p> <p>The Council currently commissions statutory (IMHA/IMCA/RPR, Care Act and DoLS) advocacy services across the Borough, delivered by an external advocacy provider, Cambridge House (not to be confused with the similarly named Cambridge House offices based in Barking Town Centre). This contract commenced in April 2019 for 2 + 1 +1 years and is due to expire on 1 April 2023.</p> <p>This report seeks permission to conduct a competitive open market tender for the provision of an Integrated Statutory Advocacy Hub. Additionally, the new provision is to include NHS Complaints Advocacy services, which supports people who are thinking about making a complaint about treatment funded by the NHS. This service until now has been tendered separately.</p> <p>The new provision will also include Liberty Protection Safeguards (LPS), which once written into legislation, will introduce new codes of conduct when depriving vulnerable individuals' liberty, which will apply to more people, including 16 and 17 year old's and to</p>	

people in more settings (including hospitals, supported living and their own home). This ruling will replace the current DoLS legislation.

### **Recommendation(s)**

The Cabinet is recommended to:

- (i) Agree that the Council proceeds with an open market competitive tender for the provision of an Integrated Statutory Advocacy Hub in accordance with the strategy set out in the report; and
- (ii) Delegate authority to the Strategic Director, Children and Adults, in consultation with the Cabinet Member for Adult Social Care and Health Integration and the Chief Legal Officer, to conduct the procurement and award and enter into the contract(s) and all other necessary or ancillary agreements with the successful bidder(s), in accordance with the strategy set out in the report.

### **Reason(s)**

Advocacy services help deliver the key Council priorities of Participation and Engagement as well as Prevention, Independence and Resilience. Advocacy supports individuals who require it to be meaningfully involved throughout the care and support process for social care and mental health, enabling individuals to direct their care and support and have choice and control.

## **1. Introduction and Background**

- 1.1 There are a number of different statutory duties on local authorities. Statutory advocacy is based on the principle of enabling those who require it to be fully involved in the key decisions that shape their lives by providing extra help to those who need it most. It is different and distinct from general advocacy or campaign activity as it is focussed on the individual within the agreed criteria.
- 1.2 **Mental Health Advocacy** - The Mental Capacity Act 2005 (MCA) and the Mental Health Act 2007 (MHA) introduced statutory obligations in England and Wales to provide advocacy services in certain circumstances. These can be summarised as:
- 1.3 **Independent Mental Health Advocacy (IMHA)** - IMHAs are specialist advocates who are trained to work within the framework of the Mental Health Act to provide an additional safeguard for patients who are subject to the Act (who have been detained). IMHA support also includes providing information and exploring options for individuals. IMHA work will take place in the community or in hospital. IMHAs are available for anyone over the age of 18.
- 1.4 **Independent Mental Capacity Advocacy (IMCA)** - IMCAs provide specialist independent advocacy to people (aged over 16) covered by the Mental Capacity Act 2005 who have no one able to support or represent them, and who lack the capacity to make a decision and/or have problems communicating, possibly because of dementia, a brain injury, a learning disability or mental health needs.

- 1.5 **Deprivation of Liberty Safeguards (DoLS)** - DoLS is one element of a wider IMCA Service and is intended to protect individuals who have been deprived of their liberty to serve their best interest. The Council may request advocacy support on receipt of a DoLS application. The purpose of a DoLS is to ensure that a person's liberty is only restricted if necessary and if so correctly and safely.
- 1.6 **Relevant Persons Representative (RPR)** – Following a DoLS authorisation and if a relevant person's representative (i.e. a family member or friend) is not available then, the supervisory body must appoint a **paid** representative with the appropriate skills, experience, and understanding of the Deprivation of Liberty Safeguards to perform this role in a professional capacity. Their role is to follow up any wider casework or recommendations post authorisation.
- 1.7 **The Care Act** - The Care Act 2014 introduced new statutory requirements for advocates.
- 1.8 **Care Act Advocacy** - A Care Act Advocate will need to be provided if there is no other appropriate person available to support and represent the person's wishes and their involvement in the care and support process. This includes the safeguarding process.

#### **Local Need**

- 1.9 **Non-Statutory Advocacy** – Locally, non-statutory advocacy is used in limited circumstances, in agreement with the authorised Commissioner, in rarer cases where an advocate is required outside of the other legislates outlined.
- 1.10 **The Integrated Statutory Advocacy Hub** - From 1 April 2023, it is intended that the new Integrated Statutory Advocacy Hub will include the current statutory advocacy provision, but will be widened to also include:
- 1.11 **Independent Health Complaints Advocacy Service (IHCAS)** – Independent Health Complaints Advocates supports people who are thinking about making a complaint about treatment funded by the NHS. This service until now has been tendered separately.
- 1.12 **Liberty Protection Safeguards (LPS)** - Once written into legislation, will introduce new codes of conduct when depriving vulnerable individuals' liberty, which will apply to more people, including 16- and 17-year old's and to people in more settings (including hospitals, supported living and their own home). This ruling will replace the current DoLS legislation.
- 1.13 Going forward, the all-new, fully Integrated Statutory Advocacy Hub will help to ensure simple and easy to access for service users and patients, and, where possible, ensure that they are able to work the same advocate, rather than be passed from person to person.

## 2. Proposed Procurement Strategy

### 2.1 Outline specification of the works, goods or services being procured

2.1.1 The contract specification is for statutory advocacy services including advocacy under the Care Act, Independent Mental Health Advocacy, Independent Mental Capacity Advocacy and Deprivation of Liberty Safeguards (whilst required), Liberty Protection Safeguards (LPS), Independent Health Complaints Advocacy (IHCAS), as well as limited Non-Statutory Advocacy in agreement with the authorised Commissioner, in rarer cases where an advocate is required outside of the other legislates outlined.

2.1.2 The specification provides a further opportunity to centralise referrals. A fully Integrated Advocacy suite of services will help to ensure easy to access for service users and patients, and, where possible, ensure that people work the same advocate, rather than be passed from person to person.

### 2.2 Estimated Contract Value, including the value of any uplift or extension period

2.2.1 The proposed budget for the contract is as follows:

<b>Provision of Integrated Statutory Advocacy Hub per annum</b>	<b>£165,000</b>
<b>Total for the contract duration</b>	<b>£660,000</b>

2.2.2 The contract will be for an initial period of two years with the option to extend for a further two years at the sole discretion of the Council.

Year 1	Year 2	Year 3 (optional)	Year 4 (optional)	Total
£165,000	£165,000	£165,000	£165,000	<b>£660,000</b>

### 2.3 Duration of the contract, including any options for extension

2.3.1 The duration of the contract will be two years commencing 1 April 2023 to 31 March 2025, with the option to extend for a further two-year period to 31 March 2027 at the sole discretion of the Council (2+2 years).

### 2.4 Is the contract subject to (a) the Public Contracts Regulations 2015 or (b) Concession Contracts Regulations 2016? If Yes to (a) and contract is for services, are the services for social, health, education or other services subject to the Light Touch Regime?

2.4.1 The contract is considered a 'light touch regime contract' under current procurement legislation therefore it is not subject to the (EU) Public Contracts Regulations 2015.

### 2.5 Recommended procurement procedure and reasons for the recommendation

2.5.1 The Integrated Advocacy Hub will be procured using a competitive open tender procedure; the tender opportunity will be advertised on Contracts Finder and the

Council’s website. The process will widen the competition and ensure the Council gets best value for money for this service.

2.5.2 The Council plans to approach competition positively, taking full account of the opportunities for innovation and genuine partnerships which are available from working with others in the public, private and voluntary sectors. Additionally, the call for competition is intended to create further opportunities to seek additional social values from potential bidders attracted to maintaining a sustained presence in the borough.

2.5.3 A single service provider model is recommended where the provider is responsible for the initial assessment of those referred, with a single access point for users, to meet holistic support needs not just legislative requirements. This should include non-statutory advocacy to be used in limited circumstances, in agreement with the authorised Commissioner. Referrals would typically be expected to be closed within an average of around 5–10 hours per case. An indicative timetable is included below:

**Table 1: Procurement timeline**

<b>Activity</b>	<b>Date</b>
Issue Contract Notice / Invitation to Tender (ITT)	Week ending 16 December 2022
Deadline for Submission of Clarification Questions	18 January 2023
Deadline for Submission of Tenders	27 January 2023
Tender Evaluation	30 January - 3 February 2023
Prepare Contract Award Report/ Get Approval	6 - 14 February 2023
Provisional Award (Notify successful/ unsuccessful Tenderer’s)	14 February 2023
Standstill Period	15 - 24 February 2023

**2.6 The contract delivery methodology and documentation to be adopted**

2.6.1 The contract will be let using the Council’s standard Terms and Conditions appropriate for this service. Payment will be made once the Council is satisfied that the supplier has delivered the services in accordance with the requirements agreed.

2.6.2 The contract will be an activity based, call-off contract for the provision of statutory advocacy. The provider will be paid for advocacy at the tendered hourly rate.

2.6.3 This Contract will not commit the Council to guaranteed payments to the contractor but will ensure continued service during the contract term.

## 2.7 **Outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract**

- 2.7.1 This procurement will offer opportunities for local suppliers to provide high-quality, cost-effective services to the London Borough of Barking and Dagenham.
- 2.7.2 Additionally, the call for competition is intended to create further opportunities to seek additional social values from potential bidders attracted to maintaining a sustained presence in the borough. The Integrated Advocacy Hub will also lower overheads and back-office costs for the provider, enabling them to invest in the promotion of their service and recruiting and developing specialist advocates.
- 2.7.3 The inclusion of non-statutory provision in the contract will help to reduce the need for external spot purchasing outside of the contract as well as the purchasing of emergency non-statutory advocacy at premium rates. This will also increase the flexibility of the LA to respond to complex cases that may not necessarily meet statutory criteria.
- 2.7.4 The amalgamation of the Independent Health Complaints Advocacy Service (IHCAS) into the Integrated Statutory Hub has reduced the combined budget total from £170,000 to £165,000 per annum, whilst also allowing for anticipated increases in future demand over the contract term.

## 2.8 **Criteria against which the tenderers are to be selected and contract is to be awarded**

- 2.8.1 It is proposed that the contract be awarded on the basis of the most economically advantageous tender, with an evaluation criteria split of 40% price, 50% quality and 10% social value.
- 2.8.2 Due to the nature of this service, it would be important that the quality element is sufficient. The Price will be assessed on the tenderers proposed hourly rate for the provision of advocacy support. This rate should incorporate all overheads, management costs, staff pay, travel time and travel remuneration, as well as any other associated costs.

## 2.9 **How the procurement will address and implement the Council's Social Value policies**

- 2.9.1 Social Value will be monitored as part of the on-going commissioning, contract management and service review. Social value intentions will be monitored to ensure that they have been implemented and sustained over the contract term. Areas of additional Social Value in Care & Support Commissioning (will ask suppliers to consider the following areas but will ask for responses to a minimum of at least 2 of the specified activity/initiatives) sought from the contractor and examples of initiatives include:

**Investment in local people:** Developing local education, employment and training opportunities, particularly for people from vulnerable groups. (or) Empowering communities, involving citizens in service design and decisions, and helping to build the capacity of local civil society organisations. An example of this social value theme could include supporting existing volunteer projects such as BD CAN.

**Investing in the local economy:** supporting local job creation by sourcing goods and services from organisations with premises/operations based in the borough and supporting initiatives to build the capacity of local suppliers.

## 2.10 **Contract Management methodology to be adopted**

2.10.1 The authorised Commissioning Manager will provide the contractor with a detailed specification to include clear outcomes and supporting performance indicators. This will detail the contract management methodology to be adopted by the contractor throughout the contract term. Performance management will be carried out by the authorised Commissioning Manager.

2.10.2 Contract performance will be monitored through quarterly contract monitoring reporting reviewed at meetings, as well as annual stakeholder panel meetings and an annual service review. The Commissioning Manager will work closely with the providers to ensure that there is a smooth transition during any mobilisation period.

## 3. **Options Appraisal**

3.1 **Option 1 - Do Nothing:** This option would not be recommended as these services enable social inclusion, reduce the risk of isolation and loss of independence. These services are for vulnerable people likely to be from complex and difficult backgrounds. This is also a statutory service and therefore ceasing this service would mean that we do not have a service to fulfil our statutory duty.

3.2 **Option 2 - Extend the current contract** - This is not viable as there are no extension options remaining in the contract, thus necessitating a need to tender, unless the related contract rules are waived.

3.3 **Option 3 - Specialist Lots** - This option would see specialist Lots for particular client groups with different contractors able to bid for a particular Lot. This option was considered and rejected as it would likely add complexity to the referral process and be less flexible in meeting service users changing needs.

3.4 **Option 4 - Join an existing framework** - There is no suitable existing framework in place. This option was considered and rejected as it would likely add complexity to the referral process and be less flexible in meeting service users changing needs.

3.5 **Option 5 – Utilise a single supplier contract arrangement** - This option is the **recommended** option.

3.6 A single access model is the preferred approach. Due to the nature and variation in service user need, a multi-skilled contractor is sought who can be responsive to range of needs across a range of client groups. This would be in the form of a wrap-around for service-users. Flexibility in provision would be a keen priority.

## 4. **Waiver**

4.1 Not Applicable.

## **5. Consultation**

- 5.1 In preparation for the for the re-tender we have consulted with stakeholders including service users, social work teams and providers. The high regard for advocacy services was highlighted. Key themes from the consultations highlighted the importance that:
- Commissioned providers have sufficient capacity and resource to continue to deliver services successfully.
  - Services are easy to access with simplified processes
  - People aren't passed around endlessly to different advocates
  - Some elements of non-statutory/community advocacy is maintained
- 5.2 This feedback has been reflected in the updated service specification which, going forward, will provide further opportunity to centralise referrals. A fully Integrated Advocacy suite of services will help to ensure easy to access for service users and patients, and, where possible, ensure that people work the same advocate, rather than be passed from person to person. Local/community advocacy will be available on rare occasions when needed on request and with commissioner authorisation.
- 5.3 The proposals in this report were considered and endorsed by the Procurement Board Sub-Group and Procurement Board at their meetings on 7 and 21 November 2022.

## **6. Corporate Procurement**

Implications completed by: Francis Parker – Senior Procurement Manager

- 6.1 The proposed Open tender process is compliant with the Councils contract rules and the PCR 2015.
- 6.2 The value of the contract has been estimated to fall below the threshold for the light touch regime.
- 6.3 The evaluation criteria is reasonable for this service and Social Value has been included.

## **7. Financial Implications**

Implications completed by Isaac Mogaji – Finance Business Partner:

- 7.1 This report seeks approval for the re-procurement of a contract for the provision of an Integrated Statutory Advocacy Hub, which amalgamates the current Statutory Advocacy and NHS Complaints Advocacy programmes respectively, for an initial period of two years with the option to extend for further 2 years at the sole discretion of the Council.
- 7.2 There is adequate funding for the contract value of £165,000 per annum within the combined budget allocations for the amalgamed programmes, which sit in Cost Centre F19890 within Children's Commissioning Service.

- 7.3 The cost of any uplift or extension of the contract would need to be contained within the total contract value.

## 8. Legal Implications

Implications completed by: Lauren van Arendonk, Locum Contract & Procurement Lawyer

- 8.1 This report seeks to approve the re-procure and award a contract for the provision of statutory advocacy services at an Integrated Statutory Advocacy Hub from 1 April 2023 to 31 March 2025. The total contract value shall be £660,000.
- 8.2 Under s1 of the Care Act 2014, an authority has a general duty to promote an individual's wellbeing. As part of the promotion of wellbeing, under section 68 of the Care Act 2014, an authority must arrange for a person who is independent of the authority (otherwise known as an "independent advocate") to be available to represent and support an adult who has a case enquiry or case review.
- 8.3 Given the nature of the contract, being advocacy services, the Light Touch Regime applies. The value of the contract is over the threshold and the provisions of the Regime apply. As the current contract does not expire until April, there is time to procure the service. The proposal is in accordance with Contract Rules.

## 9. Other Implications

- 9.1 **TUPE, other staffing and trade union implications** - Transfer of Undertakings (Protection of Employment) (TUPE) is considered to apply.

Information will be made available in advance for providers to assess their needs relating to TUPE, salary and pension costs. Potential contractors should seek their own legal advice on both the applicability of the Directive and Regulations and the consequences of the Council's view that TUPE is to apply.

Mobilisation and TUPE consultation/handover periods have been factored into the procurement timeline.

- 9.2 **Corporate Policy and Equality Impact** - Advocacy services help deliver the key Council priorities of Participation and Engagement as well as Prevention, Independence and Resilience. Advocacy supports individuals who require it to be meaningfully involved throughout the care and support process for social care and mental health, enabling individuals to direct their care and support and have choice and control.

Statutory Advocacy services provide qualified independent advocates that support people with disabilities to have their voices heard. These services enable social inclusion, reduce the risk of and consequences of isolation and loss of independence. These services benefit vulnerable people likely to be from complex and difficult backgrounds. A full Equalities Impact Assessment (EIA) has been completed.

- 9.3 **Safeguarding Adults and Children** - Statutory Advocacy services provide qualified independent advocates that support people with disabilities to have their

voices heard. This serves as a mechanism to safeguard the rights and interests of vulnerable groups who may otherwise be marginalised or systematically mis-treated if their representations were not taken into account.

The Care Act 2014 mandates that vulnerable adults who may experience difficulty understanding the safeguarding process or retaining relevant information are entitled to an advocate to be present at safeguarding meetings.

- 9.4 **Health Issues** – Advocacy is a statutory and integrated service an provide as an additional intervention in health matter in the home and community.

**Public Background Papers Used in the Preparation of the Report:** None

**List of appendices:** None