

# HEALTH AND WELLBEING BOARD

17 March 2015

<b>Title: Arrangements for advocacy provision in 2015/16 and future years</b>	
<b>Report of the Corporate Director of Adult and Community Services</b>	
<b>Open Report</b>	<b>For Information</b>
<b>Wards Affected: ALL</b>	<b>Key Decision: NO</b>
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<b>Sponsor:</b> Anne Bristow, Corporate Director of Adult and Community Services	
<b>Summary:</b> <p>Local authorities are required to involve people in decisions made about them and their care and support. The Care Act states that an independent advocate must be appointed to support and represent a person for the purpose of assisting their involvement in the care and support process where a person has substantial difficulty in being involved and that they have no appropriate individual to support them. The Care Act is clear that local authorities have a duty to ensure that there is sufficient provision of independent advocacy to meet their obligations under the Care Act and that it will be unlawful not to provide someone who meets the criteria with an advocate.</p> <p>The Council already commissions a generic advocacy framework which provides an advocacy service that is independent from the Council and provides issue-based one-to-one advocacy support during a major life change or decision. This report sets out that the current advocacy service will be extended for one year and brought up to 'Care Act compliance' from 1 April 2015. This will enable the Council to achieve an interim position to comply with the requirements of the Care Act over the next 12 months, whilst allowing redesign of services, further consultation and discussions to ensure a longer term approach which will meet local need as required and ensure full Care Act compliance.</p>	
<b>Recommendation(s)</b> Members of the Board are recommended to:	
<ul style="list-style-type: none"><li>• Discuss and comment upon the report attached.</li><li>• Receive a report at the November Health and Wellbeing Board meeting which will</li></ul>	

provide an overview of the use of individual advocacy covering the first six months of the extended service, and sets out the options for a revised service approach from 1 April 2016.

### **Reason(s)**

The Care Act is clear that local authorities have a duty to ensure that there is sufficient provision of independent advocacy to meet their obligations under the Care Act. In order to meet the requirements, the current advocacy service will be extended for one year and brought up to 'Care Act compliance' from 1 April 2015.

The Council has committed to the vision of 'One borough; one community; London's growth opportunity' and advocacy services deliver this vision and in particular, the priority of 'enabling social responsibility'. Independent advocacy supports individuals to be meaningfully involved throughout the care and support process, enabling individuals to direct their care and support and have choice and control.

## **1. Introduction**

- 1.1 The Health and Wellbeing Board has received a number of reports over the last 18 months regarding the Care Act 2014 and the significant changes from 1 April 2015.
- 1.2 At the heart of the Care Act are the concepts of wellbeing and prevention. All actions taken by local authorities under the Act will be driven by their duty to consider the impact of care needs on an individual's wellbeing, as well as its duty to prevent, reduce and delay needs arising and consequently having an impact on wellbeing.
- 1.3 Consequentially, local authorities will need to focus on people's strengths, aspirations and connections with the local community and ensure that they are meaningfully involved throughout the care and support process.
- 1.4 Some people have substantial difficulty in understanding the care and support process and may not have anyone appropriate to support them. In these cases, the Care Act requires the local authority to arrange independent advocacy to ensure the service user's involvement in their care and support process. This includes assessment, care and support planning, reviews, as well as any safeguarding concerns or investigations.
- 1.5 Barking and Dagenham has a long history of supporting individuals to exercise choice and control over their care and support, particularly through the use of personal budgets. The Borough has an established advocacy service in place to support people's involvement in the social care process who would otherwise have difficulty in participating and directing the process. This report sets out the requirements of the Care Act in relation to independent advocacy, the Borough's current service and the developments that will be required to ensure the service is Care Act compliant. This represents a timely and important opportunity to set out plans for redesigning our advocacy provision from 1 April 2016.

## **2. Requirements of the Care Act 2014**

- 2.1 Local authorities must involve people in decisions made about them and their care and support. No matter how complex a person's needs, local authorities are required to help people express their wishes and feelings, support them in weighing up their options, and assist them in making their own decisions. An independent advocate can help someone to do this.
- 2.2 The Care Act is clear that all local authorities must ensure that there is sufficient provision of independent advocacy to meet their obligations under the Care Act. There should be sufficient independent advocates available for all people who qualify, and it will be unlawful not to provide someone who qualifies with an advocate (paragraph 7.59 of the statutory guidance).

### **When will the requirement for individual advocacy apply?**

- 2.3 Individual advocacy must be considered from the very first point of contact with the local authority and at any subsequent stage of the assessment, planning, care review, safeguarding enquiry or safeguarding adult review.
- 2.4 The criteria for the provision of independent advocacy is if the individual has substantial difficulty in:
- Understanding relevant information
  - Retaining information
  - Using or weighing the information as part of engaging
  - Communicating their views, wishes and feelings.
- 2.5 An individual advocate will need to be provided if there is no other appropriate individual available to support and represent the person's wishes and their involvement in the care and support process. It should be noted that an individual advocate cannot be paid or professionally engaged in providing care or treatment to the person or their carer.
- 2.6 The Care Act sets out the key areas of activity for which an independent advocate could be used, namely:
- a needs assessment
  - a carer's assessment
  - the preparation of a care and support or support plan
  - a review of a care and support or support plan
  - a child's needs assessment
  - a child's carer's assessment
  - a young carer's assessment

- a safeguarding enquiry
- a safeguarding adult review
- an appeal against a local authority decision under Part 1 of the Care Act (subject to further consultation as this will come into effect from 1 April 2016).

2.7 However advocacy is provided the authority will retain responsibility for determining whether independent advocacy is appropriate.

### **Continuing Health Care**

2.8 Board Members are asked to note that the advocacy duty in the Care Act applies equally to those people whose needs are being jointly assessed by the NHS and the local authority, or where a package of support is planned, commissioned or funded by both a local authority and a clinical commissioning group (CCG), known as a 'joint package' of care.

### **Advocacy under the Mental Health Act and Mental Capacity Act**

2.9 Where someone already requires an Independent Mental Capacity Advocate (IMCA) or an Independent Mental Health Advocate (IMHA) the same advocate may be used in the context of providing individual advocacy.

### **Requirements of independent advocates**

2.10 The Care Act sets out the qualities, experience and training that should be held by an independent advocate and by advocacy organisations. These are in two main areas:

- **Independence** - providers of advocacy must be independent of the local authority, with their own constitution, code of practice and complaints procedure. Advocates under the Care Act should be managed by, and primarily accountable to, the advocacy organisation that recruits and employs them, thereby maintaining their independence from the local authority.
- **Training** - Once appointed, all independent advocates under the Act should work towards the National Qualification in Independent Advocacy (City & Guilds, level 3) within a year of being appointed, or achieve it in a reasonable amount of time thereafter.

## **3. Current contractual arrangements for advocacy**

3.1 The Council currently commissions a generic advocacy framework which provides an advocacy service that is independent from the Council and provides issue-based one-to-one advocacy support during a major life change or decision.

3.2 The contract is currently delivered through a framework of three advocacy providers (VoiceAbility, DABD and Royal Mencap), with a Gateway Service provider (Independent Living Agency) managing the access and referrals into the service.

- 3.3 The current contract has a budget allocation of up to £40,000 (split between the three advocacy providers) plus £5,000 per annum for the gateway keeper. The contract is due to expire on 31st March 2015 but has an option to extend.
- 3.4 Alongside this 'generic' advocacy services, the Council also commissions an Independent Mental Health Advocacy (IMHA), Independent Mental Capacity Advocacy (IMCA) and advocacy for those undergoing the Deprivation of Liberty Safeguards (DoLS) process. This is provided by Voiceability and the contract ends on 31 March 2016. The Council also contributes to a Pan-London NHS complaints service provided by Voiceability. This is commissioned on behalf of London boroughs by the London Borough of Hounslow and the contract will end on 31 March 2016.
- 3.5 As the IMCA, IMHA and DoLS contract expires in March 2016, this will allow us to have the opportunity to remodel all of the advocacy contracts at once.

#### **4. Care Act compliance**

- 4.1 Inevitably it is difficult to predict the demand for individual advocacy under the Care Act. On the one hand, there are clear, well-publicised expectations about when statutory advocacy can be required. On the other, the guidance is specific about the points in the social care assessment, care planning and safeguarding system when the statutory advocacy arrangements should be called upon. It is proposed, therefore, that a measured approach is taken to ensure that the Council is Care Act compliant for 1 April 2015, allowing full opportunity to consult, develop and redesign services from 1 April 2016. To do this, we propose to:
- Take up the extension option in the current contracts for one year until 31 March 2016. This ensures continuity of service while allowing development;
  - Increase the budget available to fund advocacy 'called off' under those contracts; and
  - Institute a careful monitoring approach for the first six months to understand how these services are accessed, and the emerging demand.
- 4.2 The extension of the current (non-statutory) advocacy framework will run until 31 March 2016. As part of this, the Council will vary the contracts to ensure that they are compliant with the requirements of the Care Act as set out in Section 2 above. Discussions have been held with all advocacy providers and the Gateway service about the requirements of the Care Act and documentation is currently being finalised with the providers and Legal Services.
- 4.3 To ensure Care Act compliance, a number of system and workforce changes are required by both the advocacy providers and the Council's own social care teams. These are set out in more detail below.

#### **Prioritisation of independent advocacy**

- 4.4 We will be issuing draft interim practice guidance to front line staff to ensure Care Act compliance in the use of individual advocacy.

- 4.5 A significant change around independent advocacy under the Care Act will be that the determination of eligibility for advocacy will be undertaken by local authority social care staff. The Gateway will provide the process for allocating, tracking and monitoring functions for the advocacy contract.

### **Training**

- 4.6 It is clear that the advocacy duties place training requirements on social care teams and the advocacy provider workforce. In terms of social care, teams are attending a number of training sessions on the Care Act and a specific development session will be held with staff on advocacy, in which the advocacy duty and the referrals system will be clearly worked through. Additionally, providers will be expected to promote their services with social care staff and other organisations and do this regularly throughout the next financial year.
- 4.7 Independent advocates are required to work towards the National Qualification in Independent Advocacy (City & Guilds, level 3) within a year of being appointed, or achieve it in a reasonable amount of time thereafter. Each of the providers have already taken their staff through basic Care Act training, but as part of the extended contract, providers will be expected to provide the Council with a training plan for each of their members of staff by May, detailing when they will be completing the City & Guilds training. This will be monitored at regular contract monitoring meetings thereafter to ensure that enrolments for training are made and adhered to.
- 4.8 There is currently no local training centre for the City & Guilds training, however there are a number of training providers who will travel to independent advocacy organisations to conduct the training with them. Local organisations, including our colleges, do not currently offer the advocacy training. However, the Council has written to the local colleges asking them about their intention to run future advocacy courses and whether they intend to become an accredited City & Guilds training centre.
- 4.9 In addition, other providers of advocacy, notably IMCA/IMHA and DoLS advocacy services will be expected to work towards the independent advocacy training requirements. This is particularly important as it is stated within the Care Act that the same advocate can provide support as an advocate under the Care Act and under the Mental Capacity/Mental Health Act.

### **Monitoring of numbers of referrals**

- 4.10 Although it is difficult to model the future demand for advocacy under the Care Act, the Department of Health estimates that by 2017/18 as many as 150,000 people every year will receive advocacy support to help them make decisions about their care and support. Some initial work undertaken at a national level by VoiceAbility, an advocacy organisation, has indicated that the estimated cost of ensuring that the advocacy duty is met nationally will rise from £14m in 2015/16 to £67m in 2018/19, a 378% increase.
- 4.11 It has is proposed that the Council will put additional funding into the advocacy contract, both for the Gateway service and the advocacy providers, in order to meet the expected increase. An increase of £6,700 will be given to the Gateway provider for more support hours to co-ordinate the referral and allocation system. A maximum of £55,000 will be budgeted across the three providers to meet additional

advocacy referrals on top of the £40,000 already available. Potential funding for these proposals is set out in the financial implications below.

- 4.12 The Council will be regularly monitoring the referrals and contract volumes and will ask the providers to submit regular monitoring information from May to monitor numbers, the budget and ensure that the 'system' is robust and working well. Regular feedback will also be sought from social care teams to see whether improvements to the service can be made.

## **5. Mandatory Implications**

### **5.1 Joint Strategic Needs Assessment**

The Advocacy Report responds to the JSNA, with more detailed work to follow to ensure recommendations in the refreshed JSNA are mapped into commissioning plans.

### **5.2 Health and Wellbeing Strategy**

The commitments set out in the Health & Wellbeing Strategy are consistent with the report as to the future development of social care services: towards more integrated delivery and greater personalisation. The refresh of the Strategy will complement the reports broad thrust for the future of social care.

### **5.3 Integration**

We will ensure that we liaise with our partners over the coming months in our discussions and consultation on the redesign of advocacy services from 1 April 2016. This will be particularly important as the IMCA, IMHA and DoLS contract expires in March 2016 and health colleagues, particularly North East London NHS Foundation Trust, will have views on the ways in which advocacy services will be developed in the future.

### **5.4 Financial Implications**

Implications completed by: Roger Hampson, Group Manager Finance (Adult and Community Services)

The current budget for advocacy services is £45,000 including £5,000 for the gateway keeper. It is proposed to increase these resources by £61,700 in 2015/16 on a temporary basis in order to provide time to prepare longer term proposals.

There are a number of areas as a result of the implementation of the Care Act where additional resources are needed. These are currently being evaluated in order to prepare proposals for the Health and Wellbeing Board to consider on how these are to be funded within the limited resources available. In the first instance, it is the intention to use the New Burdens Grant in 2015/16 of £773k to fund additional advocacy services as the need for these services is likely to be on-going. If this is not possible, a request will be made for a further call on the departmental reserve (on top of the £500k previously agreed for Care Act implementation costs).

## **5.5 Legal Implications**

Implications completed by: Dawn Pelle, Adult Care Lawyer

There are no legal implications for the following reasons:

- Duties around independent advocacy under the Care Act 2014 have been recognised.

## **6. Public Background Papers Used in the Preparation of the Report:**

None

## **7. List of Appendices:**

None