

Cabinet – 24 June 2015

Reprocurement of Specialist Independent Advocacy Services

Portfolio: Councillor E Hughes, Care and Safeguarding

Related portfolios: Public Health and Wellbeing

Service: Social Care and Inclusion

Wards: All

Key decision: No

Forward plan: No

1.0 Summary

- 1.1 Walsall Council currently commissions three independent advocacy services (1) NHS Independent Health Complaints Advocacy Service (ICAS), (2) Independent Mental Capacity Advocacy (IMCA) and (3) Independent Mental Health Advocacy (IMHA) for which all current contracts with the provider expire on 31 March 2016. All three services are currently provided by Voiceability across the Black Country.
- 1.2 These specialist independent advocacy services are a statutory requirement (Health and Social Care Act 2012). The IMCA and IMHA services have an important role in supporting people with limitations to their mental capacity and ICAS supports people who are experiencing difficulty with their health services.
- 1.3 Two of the current contractual arrangements are shared with other Local Authorities in the Black Country in order to gain additional value for money (IMCA and IMHA), and this paper is seeking Cabinet approval to enter in to renewed contractual arrangements for these services.
- 1.4 Funding for 2 of these advocacy services is by annual grant from the Department of Health and there is no guarantee of continued funding from this source. The other grant (IMHA) has one off funding in 2015/16 via the New Burdens grant. Therefore it is necessary for the Directorate to identify and confirm £140,000 funding per year for a further 4 years, to cover the proposed term of the new framework.

2.0 Recommendations

- 2.1 That Cabinet delegate authority to the Executive Director, in consultation with the Portfolio Holder, to enter into shared arrangements with Dudley, Sandwell and Wolverhampton Councils, to be led by Sandwell Council, for the

procurement of independent specialist advocacy services including the establishment of a new collaborative framework for the period up to March 2020.

- 2.2 That Cabinet notes that Social Care and Inclusion will need to identify funding for these independent advocacy services from within their current approved cash limited budget prior to any procurement to cover the full period of the procurement.

3.0 Report detail

- 3.1 There is a statutory responsibility to provide each of these services. The Independent Health Complaints Advocacy Service is under the Health and Social Care Act 2012. Independent Mental Health Advocacy is a statutory right for anyone detained under the Mental Health Act which was introduced in 2009 as part of amendments to the Act. Independent Mental Capacity Advocates are provided under the Mental Capacity Act 2005. In addition, the Care Act 2014 and the Children and Families Act 2014 set out a statutory duty for local authorities to arrange independent advocacy services.

Independent Health Complaints Advocacy Service

- 3.2 The NHS Complaints Advocacy Service is a free and independent service that helps people to make a complaint about the National Health Service (NHS). The contract to deliver the service in Walsall was awarded to Voiceability following a competitive tender process and the service commenced on 1 April 2013. The contract is due to expire on 31 March 2016. The service provider is required to act for anyone who is legally entitled to access health care or social care services in the Council's local authority area, or anyone who cares for or represents anyone who has access to health care or social services care in that area.
- 3.3 The service is provided in accordance with Chapter 1 of the Health and Social Care Act 2012 and any related statutory provisions, regulations and guidance to provide independent advocacy services, which means services providing assistance (by way of representation or otherwise) to persons making or intending to make:
- A complaint under a procedure operated by a health service body or independent provider
 - A complaint under section 113(1) or (2) of the Health and Social Care (community Health and Standards) Act 2003
 - A complaint to the Health Service Commissioner for England
 - A complaint to the Public Services Ombudsman for Wales which relates to a welsh health body
 - A complaint under section 73C(1) of the National Health Services Act 2006
 - A complaint to a Local Commissioner under Part 3 of the Local Government Act 1974 about a matter which could be the subject of a complaint under section 73C(1) of the National Health Service Act 2006 or

- A complaint of such description as the Secretary of State may by regulations prescribe which relates to the provision of services as part of the health services

3.4 The contract also requires the provider to;

- Deliver Independent Complaint Advocacy Services as described in the Health and Social Care Act 2012
- Offer a service that is accessible to Walsall residents
- Work closely with the local Healthwatch organisation to inform them of trends of complaints within the local area
- Deliver an independent Complaints Advocacy Service to all residents of Walsall, including Children and Young People, who live within the local authority boundary and
- Provide professional advice, information and guidance to clients based on their individual circumstances or, signpost referrals to other organisation where appropriate

3.5 The contract is monitored by the Joint Commissioning Unit (JCU). Value for money is determined by policy and performance data provided by the provider as part of contractual compliance. Monitoring data and case studies have been provided to the JCU and Voiceability has been contractually compliant during 2013/14 and 2014/15. The contract has been extended for a further year 2015/16.

3.6 In 2014/15 ICAS supported 98 new complainants compared to 62 in 2013-14. All 98 were responded to within 5 working days of receiving the referral. 95 cases were closed.

3.7 Based on 12 completed customer feedback forms, the majority of service users were very satisfied with the service they received in terms of responsiveness, support provided, independence, confidentiality and professionalism. Outcomes ranged from total or partial upholding of complaint to the complaint not being pursued due to time constraints or following a different legal course of action. More detail on the outcomes of complaints will be published in the Annual Report in August 2015.

3.8 From April 2014 Voiceability has developed a joint working protocol with HealthWatch to strengthen the referral process and feedback themes to them on a regular basis. They are also now working closely with HealthWatch on a programme of joint advertising in local press and at local events. Voiceability has identified resources to fund additional hours for a post that is to raise awareness and promote the service.

3.9 The current annual contract value is £64,837 and the cumulative value to date is £194,511, which has been funded from the local reform and community voices grant.

Independent Mental Capacity Advocate (IMCA)

- 3.10 Independent Mental Capacity Advocacy (IMCA)/Deprivation of Liberty Safeguards (DOLS) advocacy is also delivered by Voiceability. When someone is assessed by a doctor or social worker as lacking mental capacity to make key decisions in their lives - perhaps because of mental illness, dementia, learning difficulties, a stroke or brain injury - they can have the help of a specialist Independent Mental Capacity Advocate (IMCA). This is a legal right for people over 16 who lack mental capacity and who do not have an appropriate family member or friend to represent their views.
- 3.11 An IMCA can be instructed where there is a decision to be made regarding serious medical treatment, or a change of accommodation. In addition, there is a duty to consider whether it would be of benefit for an IMCA to be instructed when someone is involved in safeguarding procedures or care reviews.
- 3.12 The IMCA's role is to seek to ascertain the views and beliefs of the person referred to them and gather and evaluate all relevant information about that person. The advocate then writes a report to help decision-makers, like doctors, reach decisions which are in the best interests of the person concerned. Sometimes the advocate will look at courses of action other than those suggested by the professionals and sometimes seek a second medical opinion. An advocate has the right to challenge any decision made, informally if possible but otherwise through the relevant complaints procedure. In this way an advocate can enable the individual to participate to some extent in decision-making.
- 3.13 The current contract was awarded for a 3 year contract period which ends on [enter actual end date]. It is funded by a three local authorities (Sandwell, Walsall and Wolverhampton). Sandwell are the lead Contracting Authority.
- 3.14 The total cumulative value of the whole contract across Sandwell, Walsall & Wolverhampton up to the end of March 2016 will be £280,130. Walsall's contribution amounts to £86,840 (31% of value) over the three years with varying amounts (i.e £25,984, £29,228, and £31,628), which has been funded from the local reform and community voices grant.
- 3.15 The level of activity for IMCA is significantly increasing due to:
- The impact of the Supreme Court's Judgement in respect of Cheshire West, which has seen a 10 fold increase in the number of requests for DoLS authorisations, and the as yet unspecified impact of community DoLS on Local Authorities including the potential demand on advocacy services.
 - New duties in the Care Act to provide independent advocacy if an adult with care and support needs experiences substantial difficulties in fully engaging with assessment, support planning, or safeguarding interventions, and they do not have an appropriate representative. This includes carers and self funders.

Independent Mental Health Advocacy (IMHA)

- 3.16 Independent Mental Health Advocacy is a statutory form of advocacy which was introduced in 2009 as part of amendments to the Mental Health Act. Anyone who is detained in a secure Mental Health setting, under the Act, is entitled to access support from an Independent Mental Health Advocate (IMHA)
- 3.17 Others who can access an IMHA service are those who have been provisionally discharged from hospital, those on supervised Community Treatment Orders, or voluntary patients who are considering serious medical treatment as a result of a Mental Health condition. IMHA services provide an additional safeguard for patients who are subject to the Mental Health Act, and are specialist advocates who are trained to work within the framework of the Act. These services will not replace other advocacy services currently available to patients, but are intended to operate in conjunction with them.
- 3.18 An IMHA's role is to help patients to obtain information about and understand:
- Their rights under the Act
 - The parts of the Act which apply to them
 - Medical treatment they are receiving or might receive
 - Reasons for that treatment
 - The rights which other people have in relation to them under the Act
- 3.19 An IMHA will support patients to exercise their rights, which can include representing or speaking on their behalf. IMHA's may also support patients in a range of other ways to make sure they are involved in decisions that are made about their care and treatment for example:
- Care planning process
 - Mental Health Review Tribunals
 - Negotiate appropriate aftercare
 - Access other support or services
 - Raising concerns about their experiences/care
- 3.20 IMHAs do not make decisions on behalf of the person they are representing. This is the responsibility of the 'best interests decision maker' or health professional responsible for the care of the patient. IMHAs are there to make sure that people's rights are understood and respected, and that their views and concerns are taken on board in the decision making process.
- 3.21 An IMHA has specific rights under the Mental Health Act for the purpose of providing support to a patient. They have the right to:
- Visit and interview a patient in private
 - Visit and interview any person professionally involved with a patient's treatment
 - Request and inspect any records which relate to the patient
- 3.22 Independent Mental Health Advocacy is also delivered by Voiceability. This contract has been extended to 31 March 2016 to align with other advocacy

contracts. This 3 year contract is funded by a consortium of four local authorities (Sandwell, Walsall, Wolverhampton and Dudley) led by Wolverhampton Council.

- 3.23 The total cumulative value of the contract across Sandwell, Walsall, Wolverhampton & Dudley to the end of March 2016 is £614,826.68. Walsall's total contribution (including the four month extension period) amounts to £145,613.33 (23.68%). This was funded via the local reform and community voices grant up to the end of 2014/15. For 2015/16 there is one off funding through New burdens grant to fund this service.
- 3.24 The contract monitoring is conducted by the Joint Commissioning Unit and the most recent quarterly monitoring report shows that the awareness raising and marketing activity has led to an increase in cases, particularly at Dorothy Pattison Hospital. It is anticipated that demand will continue to increase as a result of relatively high deprivation in the Black Country and welfare reform which tightens the criteria of those who are eligible for benefits and will increase the need for advocacy services.
- 3.25 Demand is also expected to increase as a result of demographic increases in most age groups and actual and predicted increases in people with learning disabilities, autism and mental health issues, and relatively high shares of Black and Minority Ethnic people, unemployment, ill health and poverty compared to England.
- 3.26 Implementation of the Care Act 2014 and the Children and Families Act 2014 is also expected to see a need for additional advocacy services for young carers, parent carers and young people in transition to adulthood.
- 3.27 Examples of specific cases are listed for instance:
- Man needed help at tribunal and assessments
 - Elderly woman needed support at ward reviews
 - Woman needed support with ECT issues but was difficult to engage at first
 - Woman needed lots of support at Tribunals and managers hearing and preparation.
 - high risk unpredictable eastern European woman with translator and safeguarding issues
 - Woman with complex issues
 - high risk male needed much support re housing issues and finding support for substance misuse and family involvement issues.
- 3.28 More details of these cases are included in the quarterly monitoring reports.

Shared procurement

- 3.29 Given the specialist nature of these services there is a limited market of providers at national level and there are benefits from shared procurement across the Black Country. There are no providers of these services based in Walsall. Contract terms and lengths have been aligned to enable a joint

procurement exercise to start from July 2015 with completion in time to award new contracts to take effect from 1 April 2016. This will ensure that these specialist independent advocacy services are fairly consistent across the Black Country. Ongoing robust contract management arrangements will continue to ensure that this approach will demonstrate value for money for Walsall Council and good outcomes for the people using the services.

- 3.30 The specific proposal is for Sandwell Council to act as a lead Contracting Authority on behalf of Walsall, Dudley and Wolverhampton Councils and go out to competitive tender to award a Framework Agreement, which includes three separate 'lots' for each statutory service ICAS, IMHA and IMCA. This provides an opportunity for a single provider of all the services, or a mix of providers, and allows providers to focus upon particular services according to their strengths. This then gives each Council the most flexibility and allows them to join the Framework for the parts that they need.
- 3.31 The joint cross authority framework could be done under the auspices of the Black Country Purchasing Consortium as it is a properly agreed collaborative body and generally it allows one Council to let the contract and the other councils involved to pay and monitor for their lots unless there is a need to liaise with the lead Council to consider terminating services.

4.0 Council priorities

- 4.1 Specialist independent advocacy services support people to have greater confidence to challenge services where they are not satisfied with the outcome and thus retain a higher sense of independence and well-being which is a priority of the Sustainable Communities Strategy.

5.0 Risk management

- 5.1 Sharing in the reprocurement exercise with other Black Country local authorities does bring benefits and greater assurance of securing quality services, but also brings a higher level of risk in terms of compliance with procurement regulations. This can be mitigated by ensuring that the interests of Walsall Council are maintained at all times, and the exercise is supported by the Council's Legal and Procurement Services.
- 5.2 Ongoing training of front line staff across all health and social care services is necessary to ensure that people are aware of their entitlements for independent advocacy and able to access the services when they need them.

6.0 Financial implications

- 6.1 The total cumulative value of these three independent advocacy services to date is £426,964 and so continuing them together under a single framework will take the cumulative value above the £500,000 threshold requiring Cabinet approval. The total cumulative value of the ICAS contract for Walsall is £194,511. The total cumulative value across the Black Country of the IMCA contract is £280,130 and for IMHA is £614,826.

- 6.2 The total annual value of the three contracts for Walsall Council is £140,000 per year. Funding for 2 of these advocacy services is by annual grant from the Department of Health and there is no guarantee of continued funding from this source. The other grant (IMHA) has one off funding in 2015/16 via the New Burdens grant. There is currently no revenue budgetary provision within SC&I to meet these costs and there is a risk that the grant funding arrangements may cease during the next period of the contract.
- 6.3 In the event that grant funding does cease, then in order to be compliant with legislation the Council will have to identify alternative funding from within Council budgets. A commitment to this will be required before the Council can participate in a procurement exercise.
- 6.4 It is important to ensure that the contract is procured and awarded with provisions that enable the Council to 'call off' services as required, with no guarantee of business. The procurement should also provide for future contract variation and/or termination.

7.0 Legal implications

- 7.1 In order to ensure that the procurement process, any framework agreements and/or contracts are compliant with all relevant Public Contract and Procurement Regulations and the Council's Contract Rules, Social Care and Inclusion will need to seek the advice of Procurement and Legal Services, who will assist with using the most appropriate procedures and documents.
- 7.2 Due to the current lack of funding guarantee from 2016/17 onwards, it will be important to ensure that the services are procured and awarded with provisions that enable the Council to 'call off' services as required, with no guarantee of business; and should also provide for future contract variation and/or 'break clauses' to allow early termination by the Council.

8.0 Property implications

- 8.1 There are no direct property implications for the Council.

9.0 Health and wellbeing implications

- 9.1 Independent advocacy services support people with their independence and well-being.

10.0 Staffing implications

- 10.1 There are no direct staffing implications for the Council; however TUPE may apply between outgoing and incoming independent sector provision in the event that the tender results in a change of service provider.

11.0 Equality implications

11.1 These services are to be made available to everyone. Contract management monitors the range of service users on an ongoing basis. There is no need for an equality impact assessment because the services will continue unchanged.

12.0 Consultation

12.1 These services are to be continued under renewed contract arrangements. Ongoing consultation is more in the form of awareness raising and marketing the availability of the services to ensure high usage from future service users..

Background papers

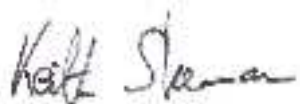
Author

Andy Rust

Head of Joint Commissioning

☎ 654713

✉ Andy.Rust@walsall.nhs.uk



Keith Skerman

**Executive Director
Social Care and Inclusion**

9 June 2015



Councillor E Hughes

**Portfolio Holder
Care and Safeguarding**

16 June 2015