

Cabinet – 20th July 2022

Independent Statutory Advocacy Contract Award

For: Care Act Advocacy, Independent Mental Health Advocacy, Independent Mental Capacity Advocacy, and Independent Complaints Advocacy

Portfolio: Adult Social Care

Related portfolios:

Service: Adult Social Care

Wards: All

Key decision: Yes

Forward plan: Yes

1. Aim

This report seeks Cabinet approval to award an Independent Statutory Advocacy Service contract to the successful provider following a competitive tender exercise. The Council will be assured that it will continue to have an Independent Advocacy service to comply with its statutory obligations, in meeting the needs of those clients who are eligible to receive an Independent Statutory Advocacy Service.

2. Summary

This is a key decision because it exceeds the threshold for “significant” expenditure of £500,000.

The current Independent Statutory Advocacy contracts expire on 30th September 2022.

These Services are a corporate priority because they protect adults from avoidable harm, including treating and caring for people in a safe environment.

3. Recommendations

3.1 That following consideration of the confidential report in the private session of the agenda, Cabinet approves the award of the Statutory Independent Advocacy Service contract to POhWER commencing from 1st October 2022 to 30th September 2024 with the option to extend for a further 4 periods of up to 12 months up to 30 September 2028 with an anticipated lifetime value of £1,216,830. This award is following a competitive tender process in accordance with Public Contracts Regulations 2015 and the Council’s Contract Rules.

- 3.2 That Cabinet delegates authority to the Executive Director of Adult Social Care, to enter into a contract to deliver the Statutory Independent Advocacy Service and to subsequently authorise the sealing or signing of any associated contracts, deeds or other related documents for such services including the optional extension periods.
- 3.3 That Cabinet delegates authority to the Director of Adult Social Care, in consultation with the Portfolio Holder for Adult Social Care, to authorise any variations to the contractual arrangements or other related documents for the services identified above, should this be required at any time during the contract term, in line with Public Contracts Regulations and the Council's Contract Rules.

4. Report detail – know

Context

Independent Statutory Advocacy

- 4.1. The Council has a statutory duty to provide independent advocacy services. The legislation under which a statutory duty to provide independent advocacy is the Care Act 2014, the Mental Health Act 1983 as amended, the Mental Capacity Act 2005 and the Health and Social Care Act 2012. These require the provision of;
- Care Act Advocacy
 - An independent Mental Health Advocacy (IMHA)
 - An independent Mental Capacity Advocacy (IMCA)
 - An independent Complaints Advocacy Service (ICAS)
- 4.2. The Council have a statutory responsibility to ensure the availability of the following services for adults where:
- a) qualifying patients, who are detained or subject to a community treatment order, require support and assistance from an Independent Mental Health Advocate (IMHA) under the Mental Health Act 1983 as amended.
 - b) in certain circumstances relating to decisions about their health or care needs, people who lack capacity and have no one else to support them, require support from an Independent Mental Capacity Advocate (IMCA) under the Mental Capacity Act 2005.
 - c) a person who lacks capacity and is being deprived of their liberty, and where the best interests assessor is unable to recommend anyone, an advocate should be appointed as the relevant person's representative to support the person through the Deprivation of Liberty Safeguards (DoLS) process.
 - d) a person has substantial difficulty in being involved in the assessment of their needs or with care planning or reviews, safeguarding enquiry or safeguarding adult review, an independent advocate is required to support them under the Care Act 2014.
 - e) individuals who, for a wide range of reasons, find it difficult to navigate the health complaints system themselves an independent advocate is to be provided, by the NHS complaints advocacy service to help people to speak up, express their views and achieve personal outcomes.
- 4.3. New legislation is expected that will introduce new Liberty Protection Safeguards (LPS). This legislation was due in April 2022 and has been postponed. The

proposed contract will be flexible to accommodate these new services in order to ensure that the Council will be able to meet its legal duties thereunder and any other changes that emerge with regards to the Mental Health White Paper when relevant statutory guidance becomes available.

- 4.4. The recommendations of this report will ensure that the Council is compliant with its responsibilities under the Care Act 2014.

Council Plan priorities

- 4.5. This service meets the Council Plan priority of ‘People’ - Encourage our residents to lead active, fulfilling and independent lives to maintain or improve their health and wellbeing.

Outcomes	Markers of Success
3. People can access support in their community to keep safe and well and remain independent at home	5. People are supported to build on their strengths and those in their communities to maintain and/or maximise their independence. 6. People feel safe in their home and community.
4. People are supported to maintain or improve their health, wellbeing and quality of life	7. People know how to maintain or improve their health and wellbeing and get timely support for this, where required. 8. People can access timely social care support and reablement to prevent a hospital admission or facilitate a timely discharge

Risk management

- 4.6. A competitive tender process has been undertaken in accordance with the requirements of the Public Contracts regulations 2015, to seek a provider to deliver this service and discharge the Council’s statutory duties to provide independent advocacy.

Financial implications

- 4.7. The lifetime cost of the contract including the four year extension option is anticipated to be £1,216,830. This is based upon annual value of the new contract of £202,805 and can be met from the existing budget of £204,769.

Due to the pending changes in legislation which will affect the IMCA service, the Council may need to increase the budget for this services to reflect legislative changes which may impact on the provider’s ability to deliver within the current contract value. An estimation of the potential cost of any additional requirements will be factored into medium term financial outlook as part of the budget setting

process. This will continue to be reviewed as further details of the impact of any changes emerge.

Legal implications

- 4.8. Commissioning have worked with Legal Services in drawing up a new contract and specification for the Independent Statutory Services, so that the procurement and the formation of the contract are compliant with all applicable legal requirements and any risk of legal challenge is minimised..

Procurement Implications/Social Value

- 4.9. The procurement process has been conducted in accordance with the Public Contracts Regulations 2015, the Council's Contract Rules and Social Value Policy.

Property implications

- 4.10. There are no property implications arising out of this report.

Health and wellbeing implications

- 4.11. Continuing to commission independent statutory advocacy services will enable the Council to promote independence, choice and control for adults and their families. It also links and contributes to the Council's corporate priorities referred to in section 4.5 of this report.
- 4.12. The principles and actions contained within this report are in full accordance with the Marmot objectives because clients will have increased independence, improved health and can positively contribute to their communities in a safe and healthy way.

Staffing implications

- 4.13. There are no staffing implications arising out of this report.

Reducing Inequalities

- 4.14. The implications for reducing inequalities have been taken into account and assessed as set out below:
- i. Consideration has been given to the Council's responsibility under the Equality Act 2010; and
 - ii. The Council's duty to meet people's eligible needs will remain the same following the award of the new contract for the Service.
- 4.15. An Equality Impact Assessment (EqIA) is not required as this is a statutory service.
- 4.16. Continuing to provide an independent statutory advocacy service will ensure that those with a disability, health inequality or any older person, are provided with a quality service to ensure that their rights are upheld and their thoughts and wishes are heard. Without an advocacy service those with these protected characteristics may not have their voices listened to, may not be involved in decisions that directly

impact on their life and may be subjected to unlawful treatment, such as being unlawfully deprived of their liberty

Climate Change

4.17. This is not applicable for this service

Consultation

4.18. A public consultation was not undertaken, as there is no change to the current service.

5. Decide

Cabinet is requested to consider the content of this report and to agree the recommendations as outlined in section 3.

6. Respond

Subject to Cabinet approval of the recommendations, Adult Social Care will work with corporate colleagues to:

- a. Progress the contract award
- b. Effectively manage this contract during its lifetime

7. Review

Once awarded and fully commissioned, the contract will be reviewed in line with our contract management and individual support plan review process.

Background papers

Procurement Advice Note – WP3714

Advocacy Services for: ICAS/IMCA/IMHA and Independent Care Act Advocacy Services
- 15/09/2021

Author

Tracy Simcox

Lead Commissioner

☎ 07983611416

✉ tracy.Simcox@walsall.gov.uk



Kerrie Allward
Executive Director
11 July 2022



Councillor Pedley
Portfolio holder
11 July 2022