



8 February 2016

Agenda Item: 6

**REPORT OF THE SERVICE DIRECTOR, STRATEGIC COMMISSIONING,
ACCESS AND SAFEGUARDING**

FUTURE ADVOCACY SERVICES PROPOSALS

Purpose of the Report

1. Further to the report to Adult Social Care and Health Committee on 30 March 2015, this report provides Members with an update on the key issues impacting on the provision of independent advocacy services including financial implications arising from legislative and policy changes.
2. The report advises Members that consultation on the future of the advocacy service provision has now been completed and it provides a summary of the findings.
3. The report proposes a new model of provision and funding for the delivery of independent advocacy services and seeks approval to retender the service in partnership with the City Council and the City and County Clinical Commissioning Groups (CCGs) with authority for the approval of the contract award to be delegated to the agreed responsible officer.

Information and Advice

Current Service Contract

4. The current advocacy service is jointly commissioned by Nottinghamshire County Council, Nottingham City Council, each of the 6 CCGs in Nottinghamshire and Nottingham City CCG. The County Council is the lead commissioner of the service.
5. Following a competitive tender process during 2011/12, the contract was awarded to POhWER (advocacy making your voice heard) and the service, called 'Your Voice, Your Choice', commenced in April 2012. The service is also delivered by Age UK Notts as a sub-contracted provider.
6. The current contract provides a range of advocacy support including statutory provision (support that the Council has a legal duty to provide) and non- statutory provision. The Council is not legally bound to provide this support; it has done so at its own discretion. It has provided this in the past to support vulnerable adults e.g. people with a learning disability, mental health condition or sensory impairment.

7. The annual contract value at commencement was £688,195 and the County Council's contribution to this was £422,944. The contract was awarded for a three year period with the provision to extend for up to five years.
8. The service model includes a single point of access, with a triage process known as 'Access to Advocacy' (A2A). Service users, agencies and organisations are able to contact the service directly via a single telephone number and website or referrals can be routed through the Council's Customer Service Centre. The triage process is undertaken remotely at a centre in Birmingham which links to all staff and services across the country, offering advice, information and a supported signposting service. The aim of this service is to deliver a timely and effective intervention which will meet the needs of the majority of people who make contact and thereby prevent escalation of issues.
9. The statutory advocacy service that POhWER currently provides includes:
 - Independent Mental Capacity Advocates (IMCA) - 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.
 - Independent Mental Health Advocates (IMHAs) - these were introduced under the Mental Health Act 2007. From April 2009 there has been a legal duty to provide IMHAs for all eligible people. An IMHA is an independent advocate who is specially trained to work within the framework of the Mental Health Act 1983 to support people to understand their rights under the Act and participate in decisions about their care and treatment.
 - Paid Representatives - the Mental Capacity Act Deprivation of Liberty safeguards were introduced into the Mental Capacity Act 2005 through the Mental Health Act 2007. It introduced a legal framework and right to appeal to protect people who lack capacity to consent to being deprived of their liberty, who are not detained under the Mental Health Act. Everyone who has a Deprivation of Liberty Safeguards (DoLS) authorisation must have a representative to ensure any conditions are being met, inform the person of their rights and how to exercise those rights. This is a vital role in ensuring the person deprived of their liberty is safeguarded. A representative can be a family member or a friend. If there is no unpaid person who is willing or able to take on this role a Paid Representative is appointed.
 - NHS Complaints Advocacy (ICAS) since April 2013 - helps people make a complaint about health and social care. NHS Complaints Advocacy is free, confidential and independent of the NHS
 - Care Act Advocacy since April 2015 - The Care Act (2014) stipulates that local authorities must involve people in decisions made about them and their care and support. The local authority must help people to understand how they can be involved, how they can contribute and take part and sometimes lead or direct the process. They must provide advocacy to people who have a 'substantial difficulty' and

no one appropriate available to support and represent them, to enable them to be involved in social care processes.

10. POHWER is currently responsible for the delivery of non-statutory advocacy support; this element of the service is sub-contracted to Age UK Notts. There are no significant differences in what statutory and non-statutory advocates do, the difference lies in the eligibility criteria for each type of advocacy support service.
11. Legislative and policy changes have substantially extended the scope of statutory advocacy which means that significantly more vulnerable adults are eligible for statutory support from April 2012. Ceasing non-statutory advocacy will have an impact for some service users, however, this risk is mitigated by the fact that a higher proportion of people are now eligible for the statutory service.
12. This current criteria for accessing advocacy support has been developed through legislation requirements and in response to case law to ensure people in specific circumstances have their rights protected. To access non-statutory advocacy a person must have a mental health condition, a physical disability, sensory or learning disabilities, including those who are elderly or reside in residential care homes. Currently Age UK works with individuals on a number of issues including benefits, housing and care. The aim is to help people to develop their confidence and to empower them to help themselves in the future.

Additional advocacy service requirements

13. Since the commencement of the contract, local authorities have increased duties and responsibilities which are detailed below:
 - The Health and Social Care Act 2012 placed a duty on local authorities to commission a local Independent Complaints Advocacy Service (ICAS). Local authorities were required to commission: ‘the provision of assistance for individuals making or intending to make an NHS complaint (which includes a complaint to the Health Service Ombudsman)’. The current contract was extended to meet these requirements from April 2013.
 - The Cheshire West Supreme Court ruling – this has increased the number of service users who fall within the scope of Deprivation of Liberty Safeguards. Where the service users do not have capacity and they do not have a relative or carer to act on their behalf, the Council is required to ensure that they have access to an independent advocate where they are subject to Best Interest decisions.
 - The Care Act, 2014 - local authorities have extended responsibilities to ensure advocacy services are made available to individuals where they had experienced ‘substantial difficulties’ in identifying and meeting social care needs. It also extended the range of activities for which advocacy should be provided, including assessment, care and support planning and review. The current contract was extended to meet these requirements from April 2015.

Current cost of advocacy

14. In order to meet the requirements of the Cheshire West ruling, and the need for additional IMCAs and Paid Representatives, additional funding of £100,000 was identified and this has been funded by County and City. The County's contribution was £67,000 and the City's was £33,000. This additional funding was allocated to the provider from April 2015.
15. Despite the additional funding, this has not been sufficient to meet the increased demand and an additional sum of £66,000 has been allocated from the County's Deprivation of Liberty Safeguards (DoLS) contingency budget in order to meet the anticipated demand during the current financial year. The increased demand is a result of an increase in the number of referrals under DoLS.
16. To meet increased demand arising from the extended Care Act duties, POhWER was also allocated £50,000 in April 2015 to meet the initial impact, with a further £50,000 to be allocated on a cost and volume basis across the year if necessary. Again the County's contribution was £67,000 and the City's was £33,000.
17. The recorded demand for this service has been lower than anticipated and this pattern is being reported across other local authorities nationally. The department has analysed the reasons for the low take up and it appears that the reason is that individuals who would have been eligible for Care Act Advocacy have in fact been accessing the discretionary service. In addition, there has been random sampling of 140 case notes and it is clear that Advocacy has been explored and provided but it has not always been recorded appropriately. Work is in progress to make the recording of Advocacy a mandatory field which will ensure accurate recording in future.
18. Commissioning Officers have also been in touch with neighbouring authorities to see how the Council compares with them. Feedback has shown that Nottinghamshire is more proactive in ensuring that individuals have the appropriate Advocacy support where needed. This has also been the feedback from the providers who work with other local authorities across the country. POhWER is continuing to provide commissioners with detailed monitoring information on the take up of the service.
19. The current cost of the existing contract is £1.09 million in total with the Council's contribution to this being £672,000.

Tender Process

20. Whilst there is the provision to extend the current contract with POhWER, advice from the Corporate Procurement team and from Legal Services is that, due to the legislative and policy changes and the subsequent need to increase the volume of provision, the service should be re-commissioned to ensure compliance with European Union procurement regulations.
21. A tender planning process has commenced and a timetable has been agreed with Corporate Procurement and Legal Services to enable a new service to be in place by October 2016. Given the value of the County Council's financial contribution towards the service, the Council will again lead the process on behalf of the other partner agencies.

Consultation

22. The consultation, which was undertaken in partnership with the CCGs and the City Council, commenced in July 2015 and was completed at the end of November 2015. The purpose of the consultation was to seek views from people in the City and County on the future model of the advocacy support service including the possibility of reducing or ceasing funding of the discretionary elements of the service.
23. The consultation process consisted of an on-line survey and a number of discussions with key stakeholder groups which included the Older People's Advisory Group (OPAG), Carers Federation, County Learning Disability and Autism Partnership Board, Milbrook Patients Council, Deaf Advisory Group, Disability Information Group, and Nottinghamshire Partnership Board User Forum. Views were sought on the following:
- the Council would provide statutory advocacy and cease funding all non-statutory advocacy
 - the Council would provide a continuation of non-statutory advocacy but would manage demand for the service by raising the eligibility criteria across all service user groups
 - the Council would provide a continuation of non-statutory advocacy but would target specific groups of people such as people with mental health and/or learning disability needs
 - the Council would cease all non-statutory advocacy and develop alternatives e.g. peer support.
24. The on-line survey was sent to organisations that work with people who are likely to be affected by any changes to the services. It was also sent to service user and carer groups across the City and County. 150 people responded with 100 of these coming from individuals who live in the County. The responses where provided were as follows:
- 16 (12%) felt that statutory advocacy should be provided and non-statutory advocacy should cease
 - 62 (45%) felt that a non-statutory advocacy service should be provided but that the eligibility criteria should be raised to reduce the take up across all service user groups
 - 40 (29%) felt that non-statutory provision should only be provided to a few key groups
 - 20 (14%) felt that non-statutory advocacy should be ceased and alternatives developed. e.g. peer support.
25. There were concerns raised in the consultation about safeguarding and there were a number of comments about compounding social isolation for those people who have no other means of support. Needs such as these could be met by the provision of alternative support. It was suggested by respondents that there are a range of existing organisations that could be used to help give vulnerable people a voice; generally people felt it was important to explore and use alternative support for people where possible and that the Council should look to improve peer support and information services as this may reduce the need for more formal advocacy support. There was also a recognition that the increase in demand for these services comes at a time of significant reductions in local authority funding and that there may need to be some prioritisation of service.

Additional factors to consider

26. Consideration is being given to a number of factors which will help scope the advocacy provision and shape the new delivery model. These factors include:
- The 2015 Mental Health Code of Practice makes reference to the commissioning of the IMHA service. This proposes increasing the number of IMHAs available for individuals with additional needs, such as language or communications difficulties and IMHAs that can respond to the diversity of detained patients. In 2016 a Bill is to be put before parliament to amend the Mental Health Act 1983 which includes the requirement for advocacy to be made available to informal patients so again extending the number of people able to access the services of an IMHA. Discussions are ongoing with the CCGs regarding a possible requirement for additional funding.
 - Transforming Care for people with Learning Disabilities - advocacy will become an integral part of the considerations about an individual's care and support services and service arrangements and discussions are currently underway to consider the most appropriate way of delivering this
 - the recent consultation on DoLS indicates that in the future there may be a consolidation of advocacy provision across the Care Act and Mental Capacity Act, and that Independent Mental Capacity Advocates would be replaced with a single system of Care Act advocates and appropriate persons.
 - proposed changes to the Independent NHS Complaints Advocacy Service (ICAS) are currently being discussed nationally. At this time it is uncertain as to whether the Council will be required to continue to deliver this service. Further clarification around this element of the contract is expected early in 2016. This provision is currently grant funded so if the duty to provide this service is transferred from the local authority then this would not produce a saving as the Council would no longer receive the grant.
 - the feasibility of continuing to commission non-statutory advocacy services given the significant increase in demand anticipated for the statutory advocacy services. Nottingham City has given an early indication that given the increase in the demand for statutory advocacy they are unlikely to be able to meet the cost of any non-statutory advocacy going forward.

Proposed Model and costs

27. A comprehensive review has been undertaken of the current advocacy provision and the changes in the legislative framework underpinning the service. Taking into account the consultation and also in the knowledge that the Council has increased duties and responsibilities at a time when it is facing significant financial pressures, it is proposed that the Council continues to fund the statutory advocacy services and ceases funding all discretionary advocacy services.
28. The proposed new model of service will include a signposting service that offers information, advice and guidance. The specification will require the advocacy providers to develop self-help and peer support.

29. The impact of ceasing funding for non-statutory advocacy would be mitigated by the comprehensive web-based Information and Advice provision (Nottshelpyourself.org.uk) that is already available. This brings together five previous information and advice local websites and has been developed in partnership with Children, Families & Cultural Services (CFCS), Mid-Nottinghamshire CCG, Nottingham City Council and Nottingham City CCG. An extensive training programme has been completed to train staff from key third sector agencies that deliver face to face support and help to vulnerable adults on how to get the most out of the website so they can support their service users effectively.
30. The CCGs have confirmed that they will fund the Transforming Care programme advocacy service until April 2018 for individuals identified with a learning disability and complex and challenging behaviours and this will be reflected in the tender documentation. There will also be provision in the contract to increase or decrease the service according to the future CCG budgets.
31. The other non-statutory service user groups who may attract NHS funding are informal patients in mental health units who are ineligible for the IMHA service. Funding for this specific provision is subject to ongoing discussion with the local CCGs.
32. Given the pressures outlined, including the projected increased demand for DoLS advocacy and possible increased demand for Care Act advocacy, the estimated cost of this model is £1.25 million and it is estimated that the County contribution could be up to a maximum of £780,000 per annum.
33. It is proposed that a tender is commenced at the earliest opportunity to put in place a new service for commencement in October 2016.

Other Options Considered

34. Following a full review of the advocacy services a number of alternative options have been considered including continuing to provide a discretionary service and also looking to target specific groups of service users. However the costs are prohibitive in a time of considerable financial constraints.

Reasons for Recommendations

35. The report seeks to ensure that Members are fully advised of the changes required to deliver services in the future which will meet the increased duties and responsibilities placed on the Council. It highlights the cost pressures arising from these legislative and policy changes and also the financial impacts which mean that the Council will no longer be in a position to fund non-statutory advocacy.

Statutory and Policy Implications

36. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Financial Implications

37. When the contract was awarded in 2012 the funding allocated to the service was £688,195 of which the County Councils allocation was £422,944. However, due to legislative changes additional funding has been allocated to enable the Council to meet its statutory responsibilities making its total allocation currently £672,000.
38. The estimated cost of the new service model is £780,000. To contribute to this, £337,000 has been requested as a part of the DoLS budget pressure considerations. The Council has £310,000 in its base budget allocation and receives a further £208,000 as part of the Local Reform and Community Voices grant. However, this grant has not yet been agreed for 2016-17.
39. If this grant is agreed, the service can be funded from mainstream budget. If this grant is not agreed, there will be a shortfall of £133,000 and the service will need to reduce expenditure accordingly. Should the Community Voices grant be ended or reduced, the continued delivery of the Independent Complaints Advocacy Service (ICAS) will be reviewed and either reduced or ended, depending on the outcome of the review.

Implications for Service Users

40. It is anticipated that a high proportion of individuals that have used the discretionary service in the past will be eligible for the statutory service. Web based information and advice is also available via the Notts Help Yourself website.

RECOMMENDATION/S

That the Committee:

- 1) notes the update on the key issues impacting on the provision of independent advocacy services and the financial implications arising from the legislative and policy changes
- 2) notes the summary findings from the consultation on the future of the advocacy service provision
- 3) approves that the Council will cease funding all discretionary advocacy services and will only fund services that it has a legal duty to do so from the commencement of the new contract
- 4) approves the budget to be allocated for statutory advocacy services as outlined in **paragraph 38**
- 5) approves commencement of the tender process in 2016 in partnership with the City Council and the City and County Clinical Commissioning Groups
- 6) agrees to delegate authority for the approval of the contract award to the agreed responsible officer.

Caroline Baria
Service Director, Strategic Commissioning, Access and Safeguarding

For any enquiries about this report please contact:

Gill Vasilevskis
Commissioning Manager
T: 0115 9773008
E: gill.vasilevskis@nottsc.gov.uk

Constitutional Comments (SLB 18/01/16)

41. Adult Social Care and Health Committee is the appropriate body to consider the content of the report.

Financial Comments (KAS 25/01/16)

42. The financial implications are contained within paragraphs 37-39 of the report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Advocacy Services – report to Adult Social Care and Health Committee on 30 March (previously published)
Details and summary of all consultation undertaken

Electoral Division(s) and Member(s) Affected

All.

ASCH361