

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker	Executive Member for Adult Social Care and Health
Date:	24 October 2019
Title:	Re-procurement of Hampshire Advocacy Service
Report From:	Director of Adults' Health and Care

Contact name: Jess Hutchinson

Tel: 01962 847966

Email: Jessica.hutchinson@hants.gov.uk

Purpose of this Report

1. The purpose of this report is to seek permission to spend up to £4,346,576 over a 4 year (2+1+1 year) contract to re-procure Hampshire advocacy services with a start date of 1 April 2020.

Recommendation

2. That the Executive Member for Adult Social Care and Health give approval to spend up to £4,346,576 over 4 (2+1+1) years for Advocacy services across Hampshire. This sum does not include the contributions made by Children's Services or Corporate Services.

Executive Summary

3. This report seeks the permission of the Executive Member for Adult Social Care and Health to spend £4,346,576 over the 4 year (2+1+1) term of the contract to re-procure Advocacy services from 1 April 2020. This value includes contributions by the Hampshire Five Clinical Commissioning Groups and NHS England but excludes the contributions from Children's Services and Corporate Services who will secure their own permission to spend for their own elements of the contract.
4. This report seeks to:
 - Set out the background of the current Advocacy services within Hampshire
 - Consider the finances for the existing and proposed new contracts.
 - Set out briefly the proposed timeline for re-procurement of the contract.

Contextual information

5. Advocacy services in Hampshire are currently provided by a consortium of providers under the title of "Hampshire Advocacy Community Interest

Company” (HACIC) – previously known as Hampshire Advocacy Regional Group (HARG) when the contract began.

6. The current contract will terminate on 31 March 2020. A new advocacy service is therefore required, to ensure continuity of statutory service provision. The current contract provides both statutory and non-statutory advocacy services with several partners providing financial contributions. The County Council is statutorily obliged to provide some advocacy services which are described as “statutory advocacy” and non-statutory advocacy may be provided at the discretion of the County Council.
 - **Care Act advocacy:** Statutory advocacy to support those who meet qualifying criteria to support them through assessments or reviews under the Care Act 2014 or to provide advocacy for those subject to safeguarding adults proceedings under section 42 of the Care Act 2014.
 - **Independent Mental Health Act (IMHA) Advocacy:** Statutory advocacy for patients detained under the Mental Health Act 1983 in both NHS and private hospitals within the boundaries of Hampshire County Council.
 - **Children’s statutory advocacy:** Advocacy provided under section 24D and section 26 of the Children Act 1989 and funded by Hampshire County Council Children’s Department.
 - **Independent Mental Capacity Act (IMCA) Advocacy:** This consists of 2 distinct elements of statutory service provision under the Mental Capacity Act 2005:
 - Advocacy for individuals assessed as lacking mental capacity to make specific decisions and where a “best interests” decision is required under the Mental Capacity Act. The Independent Mental Capacity Act Advocate (IMCA) will ensure that the individuals views and wishes are represented within the best interests decision making process.
 - Advocacy (via a paid “Relevant Persons Representative” (RPR) for individuals subject to “Deprivation of Liberty Safeguards”. Individuals deprived of their liberty who lack capacity to make decisions relating to their care are supported within the Mental Capacity Act by the “Relevant Persons Representative” (RPR). This will usually be a family member or friend but where there are no such suitable persons – the Mental Capacity Act allows for a paid RPR to be appointed by the Local Authority to ensure that the individuals views and wishes continue to be represented throughout the period they are subject to DOLS.
 - **General mental health advocacy:** funded by the Hampshire Five Clinical Commissioning Groups (CCG’s) to provide advocacy to individuals aged 18 to 65 with mental health problems. The service predominantly supports those in contact with specialist secondary mental health services (Community Mental Health Teams, or those in inpatient psychiatric units not eligible for IMHA advocacy due to not being detained under the Mental Health Act).

- **General (non-statutory) advocacy for people with a learning disability, autism, mental health issues, older adults or those with a physical or sensory disability.** This includes the provision of both group based and individual advocacy which is focused on enabling individuals to resolve particular problems or issues, including providing advice, information and sign posting on to other services as appropriate. This funding is also used to support the Learning Disability Partnership Board.
7. The County Council has Section 256 agreements (NHS Act 2006) with three of the five Hampshire Clinical Commissioning Groups to enable them to fund General Mental Health Advocacy and a contribution towards IMHA, although all five Hampshire CCGs are currently making financial contributions. The current Section 256 Agreements run until 31 March 2021 with the intention to secure new agreements with all five CCGs for the remaining duration of the new contract before commencement of the contract on 1 April 2020.
 8. The County Council also has a statutory duty to commission an Independent Health Complaints Advocacy Service (IHCAS) under the Health and Social Care Act 2012. This service has not been a part of the wider advocacy contract and has been previously commissioned by the Transformation and Governance department within Corporate Services. The intention is for the Independent Health Complaints Advocacy Service to be part of the new Hampshire advocacy contract from 1 April 2020, with the relevant funding provided by Corporate Services.
 9. Southampton City Council currently contract their own advocacy services. Hampshire residents who are patients at University Hospital Southampton can therefore receive advocacy from the Southampton advocacy contract (IMCA or IMHA) and the Hampshire advocacy contract (Care Act Advocacy). Best practice guidance states that one advocate should provide all advocacy functions.
 10. It is proposed to procure one provider across Hampshire and Southampton. The County Council and Southampton City Council would hold separate contracts with the provider, ensuring no financial risk to the County Council.

Existing Contract Financial Values:

11. The annual financial value of the Adults' Health and Care commitment is £971,953 (or £3,887,812 over the 4 year contract term). Table 1 below provides details of each advocacy partner's annual financial contributions towards the current contract together with the total overall 4 year contract value (excluding the Independent Health Complaints Advocacy Service which is not yet part of this contract).

Table 1: Advocacy Contract – current financial commitments by Agency:

Agency	Annual Financial Commitment to Advocacy Contract
Adults' Health and Care	£971,953
Hampshire County Council Children's Services	£27,000
NHS England	£91,000
Hampshire 5 CCG's	£84,691
Total Annual Contract Value (all partners)	£1,174,644
4 Year contract value (Adults' Health & Care only)	£3,887,812
4 year contract value (all partners)	£4,698,576
Independent Health Complaints Advocacy Service (annual contract value). Not part of the current advocacy contract but will be included from 1 April 2020. See Section 14 above.	£140,000

Financial risks and mitigation

12. NHS England financial contributions have been confirmed. Written confirmation regarding the CCGs' intention to provide financial contributions to IMHA and GMHA to the levels stated in table 2 has also been received. The transfer of monies is facilitated via section 256 agreements (NHS Act 2006) with three of the five Hampshire CCGs which expire on 31 March 2021. The financial contributions from three of the five Hampshire CCGs are therefore secured for year one of the new contract, but not beyond this. The County Council would be liable for any funding shortfall should the Hampshire CCGs not make the financial contributions outlined in this paper.
13. The relevant section 256 agreements for year two and beyond are currently in draft and it is anticipated that the new agreements will be in place with the five Hampshire CCGs before commencement of year two of the contract. The financial risk to the County Council is considered to be low and will be mitigated by proposed clauses in the future contract that non-statutory GMHA will cease if the relevant CCG financial contributions are not provided to fund this.

14. NHS England have confirmed that they will no longer fund IMHA (statutory advocacy) into four inpatient units as they do not have a duty to do so. Responsibility for funding these statutory services will move to Hampshire County Council from 1 April 2020 representing an approximate £36,000 per year financial pressure for Adults' Health and Care. It is expected that this pressure is absorbed within the contract.
15. There is a risk that demand on the IMCA element of the contract will exceed its current levels during the lifetime of the current contract placing a pressure on Adults Health and Care. IMHA advocacy demand within all hospitals (NHS and private) located within the boundaries of the County Council represent another area of potential future growth. These emerging risks will be closely monitored but will be mitigated through close work with the provider with the expectation that pressure is absorbed within the contract.

Potential Impact of Legislative Changes

16. The Mental Capacity Amendment Act 2019 will be implemented on 1 October 2020 and introduces fundamental changes to the current system of "Deprivation of Liberty Safeguards" (DOLS) – replacing this arrangement with "Liberty Protection Safeguards" (LPS).
17. Where currently the Local Authority is the only "Responsible Body" able to authorise an individuals' deprivation of liberty, this will change when the Liberty Protection Safeguards are introduced. This will have a number of impacts upon the way advocacy services are commissioned, funded and provided.
18. The scope of LPS will include 16 and 17 year olds who are currently excluded from the current DOLS arrangements. The demand impact of this change will need to be considered by Children's Services and be reflected in their financial contribution to the advocacy contract from 01 April 2020.
19. The impact of the change from DOLS to LPS's from 1 October 2020 could increase demand on the contract. However, it is not possible to determine the financial impact of future additional pressures due to these legislative changes. These legislative changes may make it necessary to seek permission during the lifetime of the contract to increase its value to meet additional demand. Suitable modification clauses would be built into the future contract to facilitate these increases if required, and subject to the relevant permissions.

Proposed Financial Values for contract commencing 1 April 2020

20. Table 2 below provides a breakdown of each agency's financial contribution towards the new advocacy contract.

Table 2: Proposed Annual & 4 Year Contract Financial Commitments from 1 April 2020

Agency	Value
Annual Adults' Health and Care commitment:	£971,953
Annual Hampshire County Council Children's Services commitment:	£80,000 (subject to confirmation of value of CSD contribution)
Annual NHS England commitment:	£30,000
Annual Hampshire 5 CCG's commitment:	£84,691
Annual Hampshire County Council Corporate Services (for Independent Health Complaints Advocacy Service) commitment:	£140,000
Total annual contract value (all partners)	£ 1,306,644 (subject to confirmation of value of CSD contribution)
4 year total contract value (Adults' Health and Care only)	£3,887,812
4 year contract value (Adults' Health and Care, CCG's & NHS England)	£4,346,576
4 Year total contract value (all partners)	£5,226,576 (subject to confirmation of value of CSD contribution)

Consultation and Equalities

21. Consultation with stakeholders via an online SNAP survey was conducted during the period 11 July to 4 August 2019. This was promoted to the following: service users (all client groups), learning disability carers (via Learning Disabilities LIGs email distribution lists and via current advocacy provider), inpatients detained under the Mental Health Act within Southern Health NHS Foundation Trust hospitals, partner agencies including - Southern Health NHS Foundation Trust staff, Hampshire 5 Clinical Commissioning Groups, NHS England, Wellbeing Centres, supported housing services (mental health & learning disability contracts), current

advocacy contract provider staff, service users and carers being currently supported by the Hampshire advocacy contract, Hampshire County Council front line practitioners, Best Interests Assessors (BIA's) (both Hampshire County Council employed and Independent BIA's) and Psychiatrists involved in the DOLS assessment process.

22. Statutory advocacy must be provided under the following pieces of legislation: Mental Health Act 1983 (MHA), Children Act 1989, Mental Capacity Act 2005 (MCA) and the Care Act 2014. Eligibility for advocacy is determined by each individual piece of legislation which is prescriptive in terms of who it does (and does not) apply to. This includes restrictions in relation to age or disability.
23. All advocacy is provided free of charge to the person and regardless of their gender, sexual orientation, race or marital status. Advocacy can be provided in a person's home (or via technologies such as Skype where appropriate) or place of their choosing so will not disadvantage people living in rural areas or who find travelling difficult.

Conclusion

24. The current advocacy contract represents an effective partnership arrangement, through which Hampshire County Council and other statutory agencies commission a range of statutory and non-statutory advocacy services in Hampshire. The proposal outlined in this paper represents a continuation of these effective partnership arrangements and would demonstrate the County Council's ongoing commitment to maintaining its current level of investment in these services.
25. There has been growth in demand for statutory advocacy services over the course of the current contract. Further growth is predicted due to impending legislative changes. The County Council would work closely with the provider to monitor activity within the proposed contract.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	No
People in Hampshire live safe, healthy and independent lives:	Yes
People in Hampshire enjoy a rich and diverse environment:	No
People in Hampshire enjoy being part of strong, inclusive communities:	No

Other Significant Links

Links to previous Member decisions:	
<u>Title</u> Advocacy Services	<u>Date</u> 17 September 2015
Direct links to specific legislation or Government Directives	
<u>Title</u>	<u>Date</u>

Section 100 D - Local Government Act 1972 - background documents	
<p>The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)</p>	
<u>Document</u>	<u>Location</u>
None	

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

The Equality Impact Assessment can be found here:

<http://documents.hants.gov.uk/equality-impact-assessments/AdvocacyContractRe-Procurement.pdf>

The Equality Impact Assessment (EIA) noted that advocacy by its very nature is focused upon ensuring that service users are supported to ensure that their views and wishes are heard and represented. The outcome of the EIA was therefore felt to be positive for those with a disability in particular, but also positive for those from Black and Minority Ethnic backgrounds (who can be over represented within the cohort of patients detained within psychiatric hospitals and therefore potentially eligible for IMHA support) and also positive for both poverty and rurality as the service provision is flexible enough to delivery support in the most appropriate and convenient place for service users. This ensures that those who are unable to travel (or unable to afford to travel) or where public transport

services may be limited are still able to access and receive appropriate advocacy support.