

CABINET MEETING – 7 DECEMBER 2021

EXECUTIVE SUMMARY SHEET – PART I

Title of Report:

Procurement of a Statutory Advocacy Service

Author(s):

Executive Director of Neighbourhoods

Purpose of Report:

To seek Cabinet approval to procure an integrated Statutory Advocacy Service and to continue with the current arrangements for the Independent Advocacy for Vulnerable Adults service.

Description of Decision:

Cabinet is recommended to:

- i) approve the procurement of an integrated Statutory Advocacy Service to include Independent Mental Capacity Advocacy (IMCA), Independent Mental Health Advocacy (IMHA), Litigation Friend, Care Act Advocacy, Independent NHS Complaints Advocacy (ICAS) and including the new Liberty Protection Safeguard requirements (LPS);
- ii) authorise the Executive Director of Neighbourhoods, in consultation with the Healthy City Portfolio Holder, to procure and subsequently award a contract for the integrated Statutory Advocacy Service; and
- iii) endorse and approve the continuation of the current Independent Advocacy for Vulnerable Adults service with the incumbent provider until such time as the integrated Statutory Advocacy Service is procured and the contract is awarded.

Is the decision consistent with the Budget/Policy Framework? **Yes**

If not, Council approval is required to change the Budget/Policy Framework

Suggested reason(s) for Decision:

The Council has a statutory duty to secure the provision of independent advocacy to specified groups of people as set out in relevant legislation. The proposed commissioning intentions shall enable the Council to fulfil its statutory duty.

Alternative options to be considered and recommended to be rejected:

There are no suitable alternative options to consider as the Council has a statutory duty to ensure the provision of independent advocacy to specified groups of people.

Impacts analysed.

Equality	N/A	Privacy	N/A	Sustainability	N/A	Crime and Disorder	N/A
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Is the Decision consistent with the Council's co-operative values? Yes

Is this a “Key Decision” as defined in the Constitution?	Yes
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Is it included in the 28-day Notice of Decisions? **Yes**

CABINET – 7 DECEMBER 2021

PROCUREMENT OF STATUTORY ADVOCACY SERVICES

REPORT OF THE EXECUTIVE DIRECTOR OF NEIGHBOURHOODS

1. PURPOSE OF THE REPORT

- 1.1 To seek Cabinet approval to procure an integrated Statutory Advocacy Service and to continue the current arrangements for the Independent Advocacy for Vulnerable Adults service.

2. DESCRIPTION OF DECISION (RECOMMENDATIONS)

- 2.1 Cabinet is recommended to:
 - i) approve the procurement of an integrated Statutory Advocacy Service to include Independent Mental Capacity Advocacy (IMCA), Independent Mental Health Advocacy (IMHA), Litigation Friend, Care Act Advocacy, Independent NHS Complaints Advocacy (ICAS) and including the new Liberty Protection Safeguard requirements (LPS);
 - ii) authorise the Executive Director of Neighbourhoods, in consultation with the Healthy City Portfolio Holder, to procure and subsequently award a contract for the Integrated Statutory Advocacy Service to the successful bidder; and
 - iii) endorse and approve the continuation of the current Independent Advocacy for Vulnerable Adults service with the incumbent provider until such time as the integrated Statutory Advocacy Service is procured and the contract is awarded.

3. BACKGROUND

- 3.1 The Council currently commissions an Independent Advocacy for Vulnerable Adults service from Voiceability which comprises of the following elements:
 - **Independent Mental Capacity Advocacy (IMCA)** – for people who have been assessed as lacking capacity to make specific decisions under the Mental Capacity Act 2005 and require an advocate to represent their best interests.
 - **Relevant Persons Representatives (RPR)**: for people who have been deprived of their liberty under the Mental Capacity Act Deprivation of Liberty Safeguards (DoLS) procedures and require an advocate to speak on their behalf, or to provide support as an unpaid RPR, such as a family member.

- **Litigation Friend:** who ensures that a person's legal interests are represented and where they have no other person to represent them, if invited by the court, in court proceedings for adults at risk who lack capacity under the Mental Capacity Act.
- **Independent Mental Health Advocacy (IMHA)** – for people who are subject to the Mental Health Act 1983 requirements and who require advocacy.
- **Care Act Advocacy** – to support people to be involved in the care and support assessment and planning by supporting people to understand information, express their needs and wishes, secure their rights, represent their interests, and obtain the care and support they need in line with the Care Act 2014.

3.2 The Council also accesses the Independent NHS Complaints Advocacy contract, which is a statutory service providing advocacy for individuals who are making a complaint about an NHS Service. The commissioning arrangements for this contract are led by Gateshead Council who are the lead commissioner on behalf of eleven Local Authorities in the region, including Sunderland. When this contract ends on 30th June 2022, the Council will no longer access the contract as this service shall be included in the new integrated contract.

4. CURRENT POSITION

4.1. The Mental Capacity and Deprivation of Liberty Law Commission issued a final report in 2017 confirming that the Law Commission's remit was to:

- Create a new legal framework which is accessible and clear;
- Consider how the law should protect people who lack capacity to consent to care and/or treatment;
- Embed Article 5 of Human Rights Act the right to liberty and security of person; and
- Consider Article 8 of Human Rights Act the right to private and family life.

4.2 It is now known that it is the intention to replace the DoLS with the Liberty Protection Safeguards (LPS) in April 2022. Clearly this change represents a significant overhaul to the law concerning the care and treatment of people over 16 years old who lack capacity to consent to care or treatment that deprives them of their liberty and as a result it will require changes to the way that the advocacy service is commissioned and the requirements of the service.

4.3 Since 2020, the Council's Adult Services Commissioning Team have been proactive in sourcing information that could help understand and prepare for the introduction of the LPS and the subsequent commissioning of the advocacy service. Information that has been shared via regional and national forums has been scrutinised, the outcome of which has informed the proposed tender documentation. The Social Institute for Excellence (SCIE) has hosted webinars in relation to LPS and have also shared resources to consider how LPS will seek to promote practice which aligns with human rights and the core principles and duties of the Care Act 2014.

- 4.4 The National Development Team for Inclusion (NDTi) has been commissioned by NHS England and Improvement to carry out a review to enable a better understanding of the delivery of independent advocacy to people with a learning disability and autistic people who are inpatients in mental health, learning disability or autism specialist hospitals. A survey and focus groups have been set up specifically for local authority commissioners of independent advocacy to take forward collective discussions around how advocacy is delivered and to share learning and good practice. Sunderland have participated and completed the survey which was submitted to NDTi. The Commissioning Team will continue to review any future documentation that is shared by NDTi and other regional and national partners.
- 4.5 On a more local level, the Commissioning Team have been involved in an assurance exercise commissioned by the Sunderland Safeguarding Adults Board (SSAB) that was focused on how the advocacy service successfully contributed and was considered within the Making Safeguarding Personal agenda. Discussions have taken place within SSAB in relation to the Mental Health Act White Paper and how this will influence the future commissioning arrangements for the statutory advocacy services. Consequently, the information obtained shall be used to inform the commissioning intentions for the integrated Statutory Advocacy Service contract.
- 4.6 It was expected that the Commissioning Team would have been in a position to commission the new service in 2021, however due to the full scope and impact of the Liberty Protection Safeguards legislation not being published, understood and implemented; the Council won't be able to go out to the market until February 2022 with a view to awarding the contract for the integrated service in July 2022.

5. PROPOSED WAY FORWARD

- 5.1 It is proposed that the future commissioning arrangements for the Statutory Advocacy Service shall integrate all statutory advocacy provision into one contract encompassing the Independent Advocacy Service for Vulnerable Adults and the Independent NHS Complaints Advocacy Service.
- 5.2 The proposal will require the continuation of the current Independent Advocacy for Vulnerable Adults service until such time as the integrated Statutory Advocacy Service is operational. This interim period will provide time for the publication of the Liberty Protection Safeguards and also enable the contract to run co-terminus with the Independent NHS Complaints Advocacy contract. The contract with Voiceability shall continue on previously agreed terms and conditions.

- 5.3 The value of the current service continuation into 2022 will be in excess of £500,000. The procurement of an Independent Statutory Advocacy Service is expected to be effective from 1st July 2022 for up to a period of 5 years. The expected total value of the contract will be in excess of £500,000.

6. Reasons for the Decision

- 6.1 The Council has a statutory duty to secure the provision of independent advocacy to specified groups of people as set out in relevant legislation. The proposed commissioning intentions shall enable the Council to fulfil its statutory duty.

7. Alternative Options

- 7.1 There are no suitable alternative options to consider as the Council has a statutory duty to ensure the provision of independent advocacy to specified groups of people.

8. Impact Analysis

None

9. Other Relevant Considerations/Consultations

- 9.1 **Co-operative Values:** Sunderland City Council is a co-operative Council and will act ethically in all its actions whilst adhering to and actively promoting its co-operative values of self-help, self-responsibility, democracy, equality, equity and solidarity. These values will underpin our decision making and actions.
- 9.2 **Financial Implications:** Provision exists within the Council's revenue budget for the Independent Advocacy for Vulnerable Adults and Integrated Statutory Advocacy service costs. The contract costs will be met from this budget provision.
- 9.3 **Procurement:** Corporate Procurement have been engaged and will work with the Commissioning team in accordance with the Public Contracts Regulations 2015 and the Council's own Procurement Procedure Rules.
- 9.4 **Legal Implications:** The integrated Statutory Advocacy Service shall be procured following a legally compliant procurement process. The continuation of current arrangements for the Independent Advocacy for Vulnerable Adults service does not represent a substantial modification of the contract.