

Agenda item: 7

Paper no: 3

	Surrey County Council use	CCG/s use
Section 151 Finance cleared on:	20/10/21	Dd/mm/yy
Legal cleared on:	19/10/21	
Executive Director cleared on:	09/03/22	Dd/mm/yy
Cabinet Member cleared on:	14/03/21	

Title of Report:	PROVISION OF ADVOCACY SERVICES IN SURREY	
Status:	TO APPROVE	
Committee:	Surrey-wide Commissioning Committees in Common	Date: 30/03/2022
Venue:	MS Teams -Virtual	
Presented by:	Mark Rapley, Older People's Commissioner, Surrey County Council	
Author(s)/ Lead Officer(s):	<p>Adult Instructed Advocacy: Mark Rapley, Older People's Commissioner, Surrey County Council</p> <p>Adult Non-Instructed Advocacy: Jim Poyser, Senior Manager, Mental Capacity Deprivation of Liberty Safeguards (DoLS) Team. SCC</p> <p>Children's Advocacy: Natasha Garthwaite, Senior Commissioning Manager, Corporate Parenting. SCC</p>	

Executive Summary:

1. To extend current contracts from 31 March 2022- 30 June 2022- Current providers have been informed and have agreed – (see part 2)
2. To inform CiC of outcome of retendering of advocacy contract 2022 - 25.

Contracted service(s) will provide an advocacy service for Surrey that meets all statutory requirements placed on the Council for 3 years from July 2022 with an option, on review, to extend by a further two years. Contracts will prioritise statutory provision and provide a range of discretionary advocacy services to empower individuals and prevent needs escalating, in line with the wider determinants of health and wellbeing.

Governance:

Conflict of Interest:	None identified	✓
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<p>Previous Reporting: (Relevant committees report has previously been presented to)</p>	<p>In December 2019, the Committees in Common (CIC) were presented and subsequently approved the Annual Procurement Forward Plan within which the provision of Advocacy Services was included. CIC at this time requested that a Commissioning and Procurement strategy paper was to be presented to Committees in Common prior to taking a tender to market.</p> <p>In Sept 2021, the Committees in Common approved the Commissioning and Procurement Plan for contracting of advocacy services in Surrey from 1 April 2022. Subsequently, in January CIC requested that it be informed of the outcome of commissioning and procurement process.</p> <p>This additional request required CIC to be informed at the January 2022 meeting of the committees. The required information was not available at this time because the Council was still following procurement compliant tendering and award timescales agreed within the Procurement Forward Plan.</p> <p>As such, the report was requested for submission to CIC in March 2022 and therefore current procurement and award activity has been held at a standstill. With the revised timeframe for CIC approval and to enable service mobilisation post CIC, new contracts will not now begin in April 22, but will instead commence from July 1st, 2022.</p> <p>Current providers have agreed to contract extensions and waivers have been drafted for this purpose. This ensures essential service continuity for Surrey residents. The Instructed Adult Advocacy provider Surrey Disabled People’s Partnership (SDPP) applied to SCC to cover retention costs of staff for the 3-month period of the extension which amounted to £37k. This was agreed to be paid from the Workforce Retention Grant, provided SDPP paid retention monies to staff before 31st March as this the end of the grant period.</p>	
<p>Freedom of Information: The Author considers:</p>	<p>Open – no exemption applies. Part I paper suitable for publication.</p>	<p>✓</p>
	<p>RESTRICTED – Part II paper:</p> <ul style="list-style-type: none"> • Commercially Sensitive Annex in Part 2 agenda 	<p>✓</p>

Decision Applicable to:

<p>Decision applicable to the following Committee/s: <i>Please tick (☐) as appropriate.</i></p>	<p>NHS Frimley CCG</p>	<p>✓</p>
	<p>NHS Surrey Heartlands CCG</p>	<p>✓</p>
	<p>Surrey County Council</p>	<p>✓</p>

Recommendation(s):

CIC has already approved the Commissioning and Procurement Strategy for Advocacy Services in Surrey and we now seek approval from Committees in Common to:

- 1) Extend current contracts until 30th June 2022 to ensure service continuity for Surrey residents and to allow sufficient time to mobilise the new contracting arrangements.
- 2) Award new contracts to commence on 1st July 2022 on the basis of the tender evaluation outcome as set out in the part 2 report.
- 3) Award contracts for a period of three years with the option to extend for a two-year period.

Reason for recommendation(s):

Advocacy Services detailed in this report are defined in legislation (Care Act 2014, Mental Health Acts; Mental Capacity Acts & Children's & Adoption Acts) and some "discretionary" advocacy services are also re-procured.

- Due to existing contracts coming to an end, retendering of current service(s) arrangements was required.
- As stated above, current contracts are subject to waiver and require extension until 30th June 2022 from 31st March 2022.
- New contracts will not now initiate on 1st April 2022 but for reasons outlined above will be postponed until 1st July 2022. In order to deliver Surrey-wide Independent Advocacy services, contracts are for three years plus the option to extend for up to two years. This will ensure the continued delivery of these essential services within the current financial envelope.

1. Introduction

1.1 The provision of a Children's Advocacy service is a statutory requirement and promotes delivery of seven principles of social work detailed in the Children and Social Work Act 2017 toward children and young people:

- To act in their best interests and promote physical and mental wellbeing
- To consider their views, wishes and feelings
- To encourage expression of their views, wishes and feelings
- To help them gain access to, and make best use of, services provided by the local authority and its relevant partners
- To seek to secure the best outcomes
- To be safe and stable in their home lives, relationships and education or work
- To prepare them for adulthood and independent living

1.2 Under the Care Act 2014, local authorities must involve people in decisions made about them and their care and support. No matter how complex a person's needs, local authorities are required to help people express their wishes and feelings, support them in assessing their options, and assist them in making their own decisions. The advocacy duty applies from the point of first contact with the local authority and at any subsequent stage of the assessment, planning, care review, safeguarding enquiry or safeguarding adult review. Advocacy is a statutory service, that supports vulnerable people to:

- access information and services
- be involved in decisions about their lives
- explore choices and options
- defend and promote their rights and responsibilities
- speak out about issues that matter to them

2. Types of Advocacy & Current Contracts

2.1 Due to the complex legislative environment, and the needs of people requiring advocacy being similarly complicated, Surrey County Council is looking to contract one or more providers to deliver advocacy services as three separate contracts to meet the following legislative requirements. It is important to highlight that the professional competencies, codes of practice, verification and training is different for each type of advocate.

Non-Instructed Advocacy:

2.2 This relates to statutory advocacy typically described as “non –instructed” advocacy for adults unable to instruct an advocate as they, at least in the short-term lack mental capacity and subject to the Mental Capacity Act, and Deprivation of Liberty Safeguards (DoLS). This also applies to people who under the terms of the Care Act 2014 lack capacity to instruct an advocate but might not meet MCA/DoLS criteria.

2.3 This contract is a cost and volume contract spot commissioned and funded directly by the Deprivation of Liberty Safeguards (DoLS) team on a spot commissioned case by case basis rather than block commissioned as is currently the case Adults instructed advocacy contract.

2.4 This contract was awarded to Matrix Ltd for two years commencing 1st April 2018- 31st March 2020 with the option to extend for a period of one-year subject to annual review.

2.5 This extension option was initiated in 2020/21 by application of Procurement & Contract Standing Orders (Annual plan) in July 2019 and extensions approved and notice issued 6 months in advance (@ 1st October 19) of date of original contract termination dates.

2.6 However, because of the Covid 19 pandemic and associated easement of statutory instruments (Care Act), it was not possible to engage with the market or to comply with procurement regulations and timescales. The Lead Commissioner sought approval to extend the current contract by a further year by means of a waiver/Deed of Variation and this was approved by legal services 15 September 2020 to enable contracting of provision in 2021- 22.

2.7 Re-tendering preparation has begun, and the intention is to secure a 3 +2-year contract starting July 2022. This will align adult and children advocacy contracts and tendering processes.

Instructed Advocacy

2.8 This relates to statutory advocacy for people able to instruct an advocate.

2.9 The people concerned might be:

- Detained under the Mental Health in line with statutory legislation and will include those detained under Part 2 of the Mental Health Act such as those under section, guardianship, community treatment order (CTO) or Part 3 of the Mental Health Act such as those under section 37/41, 47 and 48.
- Residents of other boroughs detained in Surrey facilities under the mental health acts
- People in Prison or approved premises (in line with statutory legislation and best practice guidance and includes Care Act advocacy)
- Entitled to advocacy under the Care Act 2014 – for example people who have substantial difficulty understanding: (in line with statutory legislation and best practice guidance regarding Care Act advocacy, safeguarding support and young carer’s assessment and applies equally to carers in accordance with the parity they are given in the Care Act).
- Care Act advocacy for young people (in line with statutory legislation and best practice) moving from Children’s to adult’s services.

- 2.10 The instructed advocacy specification also encompasses non-statutory/discretionary advocacy to people at risk and who require preventative support around a range of preventative issues in line with best practice such as people:
- accessing mental health services
 - receiving substance misuse support
 - living with a long-term condition or diagnosis, such as HIV
 - with care and support needs who have difficulty understanding or retaining information and are at high risk of an escalation in care needs if preventative measures are not taken
- 2.11 The current block commissioned contract is valued at £450K per annum funded in partnership between:¹
- SCC's Adult Social Care service - to meet statutory duties under the Care Act (SCC annually £361k) for clients with capacity to instruct an advocate
 - SCC's Public Health service - to provide support to people with substance misuse needs (£26k)
 - Surrey Heartlands CCG on behalf of all CCGs in Surrey - to support engagement of people needing advocacy in health and public health settings (£63k)
- 2.12 Originally, this contract was awarded to Matrix Ltd/Surrey Disabled Peoples Partnership (SDPP) in collaboration for a fixed term of three years commencing on 21st April 2017- 20th April 2020, with the option to extend for a period of one-year subject to annual review.
- 2.13 This extension option was initiated in 2020/21 by application of Procurement & Contract Standing Orders (Annual plan) in July 2019 and extensions approved and notice issued 6 months in advance (@ 1st October 19) of date of original contract termination dates. The intention was to use this time to work with the market to develop specifications and identify unmet needs in the light of imminent changes in legislation.
- 2.14 For 21/22 originally, this contract was awarded to Matrix Ltd/Surrey Disabled Peoples Partnership (SDPP) in collaboration for a fixed term of three years commencing on 21st April 2017- 20th April 2020, with the option to extend for a period of one-year subject to annual review.
- 2.15 The intentions for the new procurement of this instructed service should be set out here in the same way as is the case for the non-instructed service in para 2.7 above.

Advocacy under Children's & Adoption Acts

- 2.16 Advocacy provides a confidential opportunity for Children and Young People (C&YP) to share information and concerns about their care or treatment, awareness rights and access to independent representation.
- 2.17 Advocacy towards children and young people is subject to different statutory construction although Mental Health Acts still apply. Duties are detailed in the Adoption and Children Act 2002 and Children Act 1989. In summary, Councils have statutory duties to offer confidential independent advocacy to empower and enable young people to have a voice through the delivery of independent information, advice, and support, including Looked After Children, Care Leavers making or intending to make representation under section 24D of the Children Act and for children making or intending to make a representation under section 26 of the Children Act 1989. Further, Article 12 of the UN Convention on the Rights of the Child upholds children's rights to participation in decision-making about matters of concern to them.

¹ The contract value for new arrangements is reduced by £25k to £425k and redirected to Non - Instructed Advocacy to provide advocacy for people who qualify for an IMHA but at time of application do not have capacity.

- 2.18 Advocacy must also be delivered as a direct response to Ofsted recommendations (published 16 May 2018) that ‘Children and Young People who are on child protection plans or in care should understand the role of independent advocates and have easy access to them if they choose to seek help’.
- 2.19 Children have dissimilar needs to adults by virtue of being children. Resultantly, advocacy to children is highly specialised and requires different competencies, application and training compared to advocates delivering to adults. Furthermore, for this reason and developmental/emotional circumstances some individuals lack competence so effectively some require non-instructed or instructed advocacy, and sometimes both.
- 2.20 After the Ofsted report in 2018, Coram Voice were approached to deliver an advocacy service to include; all Looked after children/young people, care leavers, children and young people going through Child Protection procedures and those with Special Educational Needs and Disabilities (SEND) who are; over the age of 16 with an education health and care plan (EHCP), any age with an EHCP and English as an additional language or under 16 with an EHCP but no capable parent to advocate on their behalf , within and outside of the Surrey area.
- 2.21 In April 2020, Coram Voice began delivering independent advocacy on behalf of Surrey County Council (SCC). The current waiver contract was put in place to allow SCC to pilot an advocacy service; gain an understanding of what the service can offer in response to demand and service user need and to inform planning for future advocacy services.
- 2.22 For Children’s advocacy there is a waiver in place to extend the contract until 31st March 2022 – estimated contract budget £140,000 (actual spend £113,000) approved January 2020.
- 2.23 The contract specification states that Coram Voice is to:
- Provide up to 100 advocacy support cases for looked after children, care leavers and children subject to child protection planning.
 - Provide up to 50 advocacy support cases for children and young people who have special education needs or disabilities (SEND) and/or have an education health care plan (EHCP)

Procurement

- 2.24 A light-touch open procurement was agreed as the most suitable approach for commissioning of Advocacy Services for Adults and Children. The light-touch regime allowed more flexibility to design the tender and award criteria during the procurement process. The procurement process commencing in October 2021 ensured that new contracts are in place for 1st April 2022 when current contracts will end.
- 2.25 Unless otherwise deemed appropriate through contract management or service delivery expectations not being fulfilled, the services to be procured will be subject to three-year contracts with extension option with cumulative duration up to 24 months.
- 2.26 The tender consisted of 3 lots (non-instructed and instructed Adults Advocacy, and Advocacy under Children’s & Adoption Acts), and the plan was to have only one provider for each service at the end of the procurement process.

Procurement process key dates:

Documents issued to Bidders via tender platform	Early October 2021
Tender Live (to the market)	30 Days

Clarification period (bidders can ask questions via the tendering platform)	Open from tender go live date, closes 7 days before tender submission deadline
Suppliers' submission deadline	Early November 2021
Successful and unsuccessful letters to be sent to bidders	December 2021
Previous Mobilisation	January to March 2022
Previous Contract start date	1 April 2022

Revised Mobilisation	April - July 2022
Revised Contract Start Date	1 July 2022

Consultation/Public Engagement:

- 2.27 Internally, Officers from Adults Social Care, Children's Services, Public Health, Finance, Legal Services and Procurement and Commissioning.
- 2.28 Engagement meetings took place between the CCGs, current providers, (Matrix & SDPP) and Surrey Coalition of Disabled People, Surrey Independent Living Council, and Healthwatch Surrey) to help confirm the scope of re-procurement, identify unmet need, and refine proposed specifications.
- 2.29 Additionally, we worked with current /recent users of instructed advocacy services (co production volunteers) to help design and refine key operational standards included in the service specifications currently being drafted.

3. Risk Management and Implications:

Liberty Protection Safeguards

- 3.1 DOLS are to be replaced by The Liberty Protection Safeguards (LPS) via the Mental Capacity Amendment Act, which gained Royal Assent in 2019. Currently the new Act is scheduled for implementation from 1st April 2022 but set back to an unspecified future date.
- 3.2 The Mental Capacity Act and LPS code of practice were expected to be published by government in June 2021 but at time of writing, this has not happened. Once published, a three-month consultation period will follow. This new legislation is expected to have a huge impact on the amount of Advocacy required under the IMCA contract to support those that are subject to LPS. All contracts will contain clauses to be expanded to meet increased demand (of relevance to the non-Instructed contract particularly) within commissioning and budgetary constraints.

4. Financial and 'Value for Money' Implications

- 4.1 All advocacy Services amount to a reinvestment by virtue of statutory expectations. The procurement of these advocacy services will enable SCC to meet its statutory duties in relation to the provision of advocacy services for children, young people, and adults with care needs. The planned procurement for each of the three proposed lots is within the current budget envelope for these services, although as set out below the demand for services for the non-instructed IMCA may increase.

- 4.2 Independent Adult Instructed Advocacy (IMHA) is a block commissioned contract with a total value of £425k and set out in paragraph 2.11 this service is funded by a combination of SCC's Adult Social Care service, Public Health service and Surrey Heartlands CCG.
- 4.3 Independent Non-Instructed Mental Capacity Act Advocacy (IMCA) is a cost and volume contract spot commissioned to meet the needs of people subject to MCA and/or Deprivation of Liberty Safeguards (DoLS); and Care Act Advocacy for clients who lack capacity to instruct an advocate.
- 4.4 Projected expenditure between 1st April 2018 and 31st March 2022 is estimated at £842k, or £212.5k annually. However, DOLS are to be replaced by Liberty Protection Safeguards (LPS) via the Mental Capacity Amendment Act, which gained Royal Assent in 2019. Currently the new Act is scheduled for implementation from 1st April 2022. This new legislation is expected to have a huge impact on the amount and aggregate cost of advocacy to support those that are subject to the LPS. Although it is not possible to predict the total cost of services because they are volume driven, we do not believe that unit costs will reduce as demand increases. However, we can include this aspiration in tender documentation going forward.
- 4.5 Children's Advocacy (Instructed & Non-Instructed) is a block commissioned contract delivering up to 100 advocacy support cases for looked after children, care leavers and children subject to child protection planning and up to 50 advocacy support cases for children and young people who have special education needs or disabilities (SEND) and/or have an education health care plan (EHCP). The contract budget is £140,000 per annum currently.

5. Section 151 Officer Commentary

- 5.1 Although significant progress has been made over the last twelve months to improve the Council's financial position, the medium-term financial outlook beyond 2021/22 remains uncertain. The public health crisis has resulted in increased costs which may not be fully funded. With uncertainty about the ongoing impact of this and no clarity on the extent to which both central and local funding sources might be affected in the medium term, our working assumption is that financial resources will continue to be constrained, as they have been for most of the past decade. This places an onus on the Council to continue to consider issues of financial sustainability as a priority to ensure stable provision of services in the medium term.
- 5.2 As such, the Section 151 Officer supports the proposed procurement plan for the advocacy services set out in this paper. The outcome of the procurement will be factored in the Medium-Term Financial Strategy (MTFS). If demand for independent non-instructed Mental Capacity Act Advocacy services does increase, then the Council will need to confirm how any proposed increase to service provision to meet this demand growth could be funded within available budget resources before this is actioned. In addition, the total cost impact on SCC of the implementation of Liberty Protection Safeguards is being considered as part of developing ASC's latest budget proposals for the MTFS. These assumptions will need to be reviewed and updated when the government confirms plans for the implementation of the new legislation.

Legal Implications – Monitoring Officer

- 5.3 Under the Constitution Part 3 paragraph 8.28 the Committee in Common has authority to make strategic decisions relating to children's community services and decisions related to services supporting mental health.
- 5.4 Due to the proposed contract values being more than the Light Touch Regime threshold the Public Contract Regulations 2015 (PCR 2015) will be applicable and therefore must be observed and complied with. It has been highlighted that the proposed contract periods will include the option to extend for 2 years. For the purposes of Reg 72, it will be prudent to ensure the option to extend is provided for in the initial tender documentation in clear and precise terms.

5.5 It is noted that there are current contracts already in place with incumbent providers and these terms and conditions will need to be reviewed to deem whether they remain fit for purpose. These contracts are due to expire in April 2022, the proposed route to tender timelines will ensure continuity of a statutory provision.

6. Equalities and Diversity

6.1 Advocacy promotes social inclusion, equality, and social justice for vulnerable and hard to reach groups across a range of age groups, needs and settings including young people in transition to adult services, older people, adults with disabilities, including carers, those with sensory impairments, learning difficulties, Autism, physically disabled and those with mental health issues and individuals with limited capacity, for example, with Dementia or an acquired head injury.

7. Other Implications:

Corporate Parenting/ Looked After Children Implications

7.1 As a result of this service children and young people will have a voice throughout their journey within the care system. Children & Young People feel listened to, safe, cared for and have their views taken into consideration throughout any decision -making process regarding their care from the Local Authority. Children and young people will feel confident and empowered to contribute to the decisions that are made about them and carry this skill with them on the journey to adulthood.

7.2 Provision of advocacy to children and young people will support SCC to deliver statutory duties.

Safeguarding Responsibilities for Vulnerable Children and Adults Implications

7.3 Providers will demonstrate a strong commitment to creating and maintaining a safe working environment where children and young people and vulnerable adults are subject to safeguarding under national legislation & national guidance described earlier in this report and to Surrey safeguarding policies, processes and procedures. These will be part of performance management and quality arrangements going forward. Providers must draw up their own guidelines and procedures that must be acceptable to the Council and in accordance with the safeguarding policy².

Environmental Sustainability Implications

7.4 None relevant.

Sources/background papers:

- None
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² <http://www.surreyscb.org.uk/professionals/guidance-protocols/>
<http://www.surreycc.gov.uk/social-care-and-health/surrey-safeguarding-adults-board/surrey-safeguarding-adults-board-information-for-professionals>

