



Author/Lead Officer of Report: Avi Derei,
Commissioning Officer

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Report of: Director of Adult Health & Social Care

Report to: Co-operative Executive

Date of Decision: 24/3/22

Subject: Extension to the Sheffield Advocacy Hub Contract

Is this a Key Decision? If Yes, reason Key Decision:-	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
- Expenditure and/or savings over £500,000	<input checked="" type="checkbox"/>	
- Affects 2 or more Wards	<input checked="" type="checkbox"/>	
Which Executive Member Portfolio does this relate to? Health and Social Care		
Which Scrutiny and Policy Development Committee does this relate to?		
Healthier Communities and Adult Social Care Scrutiny and Policy Development Committee		
Has an Equality Impact Assessment (EIA) been undertaken?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
If YES, what EIA reference number has it been given? 1146		
Does the report contain confidential or exempt information?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-		
<p><i>“The (report/appendix) is not for publication because it contains exempt information under Paragraph (insert relevant paragraph number) of Schedule 12A of the Local Government Act 1972 (as amended).”</i></p>		

Purpose of Report:

The purpose of the report is to request an extension of 12 months to the current Advocacy Services contract which is due to expire March 31st 2022, to meet its statutory duties.

This report highlights the importance of ensuring continuity of advocacy services in a way that meets the needs of the people of Sheffield who require this service by extending the current contract whilst also allowing officers to assess the impact of key legislation changes on advocacy training and practice.

In addition, this report will explore suggested changes to the scope of the Advocacy Services contract in line with engagement and feedback from key stakeholders.

Recommendations:

It is recommended to the Co-operative Executive:

- 1) Approve the extension of the Sheffield Advocacy Hub contract by 12 months so that the Council can continue to meet its statutory duties under the Care Act 2014, Mental Health Act 2007, the Health and Social Care Act 2012 and the Mental Capacity Act 2005 as outlined within this report.
- 2) To the extent not already delegated to them by the Leader's Scheme of Delegation, delegate authority to the Executive Director of People, in consultation with the Director of Legal and Governance and Director of Finance and Commercial Services to prepare and execute all required documentation and take steps to implement these recommendations and the proposals as outlined within this report.
- 3) Notes that sufficient time is allocated to allow officers to measure the impact of the amendments to the Mental Capacity Act 2005 from April 2022 which in turn will have a direct impact on how Advocacy Services are delivered nationally as outlined in this report.

Background Papers:

N/A

Lead Officer to complete:-		
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.	Finance: Ann Hardy
		Legal: David Cutting/Richard Marik
		Equalities: Ed Sexton
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>		
2	EMT member who approved submission:	Alexis Chapell
3	Executive Member consulted:	George Lindars-Hammond
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.	
	Lead Officer Name: Avi Derei	Job Title: Commissioning Officer
	Date: 24/03/22	

1. PROPOSAL

- 1.1 We are proposing a 12-month extension to the current Advocacy Services contract which would be due to otherwise expire in March 2022.
- 1.2 The Council currently have a statutory duty under the Care Act 2014, Mental Capacity Act 2005, the Health and Social Care Act 2012 and the Mental Health Act 2007 to maintain a stable and sustainable care market. The Council also has a duty under the Care Act 2014 to arrange an independent advocate for adults as part of assessment and care management including safeguarding enquiries. The expiration of the contract without another in place to replace it would mean that the Council would fail to meet its statutory duty.
- 1.3 Our intention is to impact assess changes to key legislation as, for example, 'Deprivation of Liberty' transitions to become 'Liberty Protection Safeguards' which are due to come into force in April 2022. With the additional time that this extension would afford, the Council will

- 1.4 undertake a thorough impact assessment of the changes to legislation and identify training and practice needs in both the advocacy services and social care following those changes.
- 1.5 The current contract for Advocacy Services is due to expire March 2021, and there is insufficient time to re-tender for services before this date. The extension to the current contract has been subject to detailed consideration, in respect of alternative approaches, such as a light touch re-procurement, referred to in section 5. This, coupled with the consequential impact of the pandemic upon our internal resources, has had an impact on the timeline for a final decision.
- 1.6 We have previously communicated an informal notice of intent to extend the contract to the provider, clearly stating that this would be subject to final approval.
- 1.7 Should the contract expire without re-tender or extension, then we would be unable to contract any further Advocacy services via the existing contracting arrangements.
- 1.8 We will be unable therefore to apply in an equitable manner our Statutory duty under the Care Act 2014, Mental Capacity Act 2005, The Health and Social Care Act 2012 and the Mental Health Act 2007 to maintain a stable and sustainable care market.
- 1.9 The amendment to the Mental Capacity Act 2005 moving from Deprivation of Liberty (DOLS) to Liberty Protection Safeguards is may be introduced in July 2022. This will have a substantial impact on multiple areas of advocacy, Independent Mental Health Advocacy, Independent Mental Capacity Advocacy, Independent Mental Capacity Advocacy Deprivation of Liberty (DOLS) and Relevant Person Representative advocacy. It is important this impact is understood as it will change the way advocacy services operate and interact with social care.
- 1.10 If there was no re-tender or extension, advocacy support could only be arranged via a spot purchases or direct payment, which puts unnecessary pressure upon the person in receipt of care to arrange, finance and manage if this is not what they wish to do. We do not feel that this process will be equitable across those in need of advocacy support and will inevitably favour those already the social care system. This may in turn lead to additional pressure on social care.
- 1.11 Any terms and conditions that we currently contract against, such as quality expectations, timescales for procurement, and quality monitoring, would no longer be enforceable, and would negatively impact upon The Council's ability to ensure that the services procured for Sheffield residents are appropriate and meeting their needs.
- 1.12 A 12-month extension will ensure that alongside measuring the impact of the legislation change we will be able to adhere to the 6-month procurement lead in time required.

1.13 The pressures mentioned above about the markets ability to tender for this contract creates risk that cannot be mitigated.

1.14 This extension will ensure:

- The Council continues to meet its Statutory duties under the Care Act 2014, Mental Capacity Act 2005, The Health and Social Care Act 2012 and the Mental Health Act 2007
- There are no adverse effects to residents currently in receipt of advocacy services, in terms of the continuity of their advocacy support.
- There is no adverse effect to both the Council and Sheffield residents currently in hospitals or residential settings, already receiving or awaiting advocacy support to enable moves to less restrictive care environments.
- Sufficient time is granted to develop, test and implement new, sustainable a new advocacy model.

Current Position

2

2.1 Currently advocacy services are delivered by a single provider, The Sheffield Advocacy Hub. The Sheffield Advocacy Hub is a partnership between three non-profit organisations - Citizens Advice Sheffield, Cloverleaf Advocacy and Disability Sheffield.

2.2 The Sheffield Advocacy Hub provides a single point of contact for anyone requiring adult advocacy services. It has been operating under contract since April 2017 on a 3-year initial contract with a plus 1 plus 1 extension. Prior to the introduction of the Sheffield Advocacy Hub in April 2017 these services were delivered by several different organisations making access to the service confusing for clients and carers. This change has had a positive impact on a variety of stakeholders.

2.3 Under the current contract the following advocacy services are available: Care Act advocacy, independent mental health advocacy, independent mental capacity advocacy, independent mental capacity advocacy with a focus on deprivation of liberty, NHS complaints advocacy, relevant person's representative advocacy.

2.4 The current referral levels surpass initial pre contract forecasts and evidences the positive utilisation of the services within the Sheffield community. A breakdown of the last 6 months of referrals can be found below. With the figures below in mind it is likely that over the period of

extension The Hub will pick up approx. 5,000 referrals for various types of advocacy.

Type of advocacy support referrals	April – Oct 2021
Care act	178 – 21.24%
Independent Mental Health Advocate	153- 18.26%
Independent Mental Capacity Advocate	139 – 16.59%
Independent Mental Capacity Advocate Deprivation of Liberty (DOLS)	83 – 9.90%
Learning disability	18 – 2.15%
NHS complaints	54 – 6.44%
Relevant Person Representative	213 – 25.42%

- 2.5 The current contract’s pricing structure is based on hours delivered under the contract without a differentiation between types of advocacy support provided. The current average spend is currently £260,000 per quarter. The estimated cost of this extension will be 1.04m based on current referral rates.

3 Transformational Ambitions

- 3.1 The amendment to the Mental Capacity Act 2005 moving from Deprivation of Liberty (DOLS) to Liberty Protection Safeguards is likely to be introduced in July 2022. This will have a substantial impact on multiple areas of advocacy, Independent Mental Health Advocacy, Independent Mental Capacity Advocacy, Independent Mental Capacity Advocacy Deprivation of Liberty (DOLS) and Relevant Person Representative advocacy. These areas form 69% of the referrals. The changes are likely to impact in terms of practice and the training needs of both the advocates and social care in the area of Advocacy. It is important that the impact of these changes is considered in a measured approach which will inform a future service specification.

- 3.2 There have been some gaps in the areas of advocacy services commissioned currently identified by The Sheffield Advocacy Hub in areas such as community DOLs and parental advocacy. Further cross departmental work is required to explore the scope of the gaps identified, consult with stakeholders, and include in future service specification if appropriate.

- 3.3 Throughout the term of the contract there have been requests from social care for staff training around the subject of Advocacy. While not in the original service specification, The Sheffield Advocacy Hub have been accommodating these requests. There is a need to include an element of training within future service specifications. The extent of these training requirements will be affected greatly by the amendment to the Mental

Capacity Act 2005 mentioned above.

Key milestones

Cooperative Executive approval 12 Month Contract Extension	24.03.22
Contract Go Live	01.04.22

4. HOW DOES THIS DECISION CONTRIBUTE?

- 4.1 The Corporate Plan outlines a desire ‘Enabling adults to live the life that they want to live’ and. Advocacy services are essential in conveying a voice for the voiceless and supporting the residents of Sheffield to get the support they want from social care and health services.
- 4.2 The Corporate Plan outlines a desire to ‘Involve our citizens in the decisions that affect them and their communities’ – We view advocacy as key partner in this area, supporting the residents of Sheffield to participate in discussions about issues that affect them and their communities.
- 4.3 The overarching principles of the transformational ambitions detailed in section 3 are consistent with the Corporate Plan and will seek to reduce health and social care inequalities.
- 4.4 It has been identified that the elapsing of the contract without a new contract in place to start will impact upon the accessibility of statutory advocacy services.
- 4.5 The extension of the current contract and contract will ensure that we continue to meet the ambitions within the Joint Health and Wellbeing Strategy that everyone has access to quality care.
- 4.6 Adult Health and Social Care Strategic Plan (2021 – 2030) outlines in its commitments to ‘Provide temporary assistance to help people regain some stability and control in their life following ill health or crisis.’ – several elements of the current advocacy contract are designed to enable this approach. An advocate will ensure a person has the tools to make an informed decision.
- 4.7 Adult Health and Social Care Strategic Plan (2021 – 2030) outlines in its commitments to ‘Make sure support is led by “what matters to you”, with helpful information and easier to understand steps’ – Often advocacy support and more specifically Care Act and Generic LD advocacy bridge that gap in communication and have the tools to offer independent support around a specific subject/area of life to those who feel they are not being heard and to ensure they are taken seriously and that their rights are respected.
- 4.8 Adult Health and Social Care Strategic Plan (2021 – 2030) outlines in its

outcomes that 'Everyone in Sheffield should be able to live independently and have control and choice over decisions that affect their care and support.' – We view advocacy as a key enabler in this area to support the voices of Sheffield residents to be heard and become the key decision makers about their care and support.

- 4.9 Sheffield City Council People Portfolio Strategy 2021-22 outlines the objective of 'Increase equality, resilience and inclusion', 'Thriving communities where people like to live', 'People are and feel safe', 'People are independent and can achieve their potential' & 'People are healthier and happier' – We see advocacy as a golden thread throughout these objectives

5. HAS THERE BEEN ANY CONSULTATION?

- 5.1 Consultation has been completed with the contracts team regarding the performance of the provider. Contracts officers have reported that the relationship with the provider is excellent, quality of the advocacy provided is high and that they are receptive to feedback and take actions in a timely manner. While the volume of the work is much higher than initially anticipated, the provider has implemented a robust triage system to enable the urgent cases to be accommodated.
- 5.2 Commissioning officers have stated that the Hub has been forthcoming in engaging with a variety of activities outside of the scope of the contract such as training requests from social care, participation in a provider selection process for a new supported living development and taking on focused work to support social care in resolving complaints. It is clear that the residents of Sheffield are at the heart of the provider's operation and that they are dedicated in improving both user experience of advocacy services and generally social care services across the city.
- 5.3 Assessment and Care Management have fed back that the working relationship is positive, there is a close link between the DOLs team and the provider. Social care has highlighted that the training offered for new starters from the Hub is of good quality. Assessment and Care Management are in agreement with this extension request citing that the major change to legislation would have a substantial impact on the ways of working and that it would be prudent to measure this impact before designing a new service specification.
- 5.4 Due to the vast scope of stakeholders, we were unable to complete robust consultation with the end user. We feel however that the very low number of complaints and multiple stories of difference evidence a positive experience for the end user. An additional advantage of a contract extension would be the opportunity to engage people who use services and carers as well as wider stakeholders in a more extensive consultation and review

6. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

6.1 Equality of Opportunity Implications

6.1.1 Decisions need to take into account the requirements of the Public Sector Equality Duty contained in Section 149 of the Equality Act 2010. This is the duty to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it

6.1.2 The Equality Act 2010 identifies the following groups as a protected characteristic: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

6.1.3 The extension will support people to have a voice in their own health, support and other matters that they would otherwise be without. In Equality Act terms, beneficiaries share many protected characteristics.

6.1.4 The primary characteristic of Disability covers a range of support under Sheffield Advocacy Hub (including mental health and learning disability). Secondary characteristics (e.g. relating to Race or Age) apply). And advocacy is also relevant to the Council's wider consideration of equality interests – e.g. Health, Poverty.

6.1.5 As such, the extension to the contract and maintenance of advocacy provision is supportive of the Council's responsibilities under The Duty, namely to consider ways to improve the experience and outcomes of people who share protected characteristics relative to those who do not.

An Equality Impact Assessment has been completed and is summarised below:

- The extension of the contract will prevent unnecessary disruption to continuity of care, which would have negative impacts upon the people in receipt of services
- The extension will allow continued equitable access to advocacy services for Sheffield residents
- Positive impacts upon persons who share protected characteristics would be maintained as a result of the extension.

The proposals will support to ensure that advocacy support remains stable over the next 12 months and will continue to ensure the availability and quality of advocacy delivered to vulnerable adults with eligible social care needs. The extension of the contract would not impact disproportionately on any section of the service user population.

6.2 Financial and Commercial Implications

- 6.2.1 The proposed extension value of £1.04m across 12 months is in line with contract spend over the past two years, and therefore appears sufficient to meet demand.

However, the Advocacy service has exceeded their budget for the past four years.

	FY Budget	FY Outturn	Variance
21/22	534,200	717,736	(183,536)
20/21	534,200	725,293	(191,093)
19/20	534,200	603,354	(69,154)
18/19	474,200	540,315	(66,115)

(21/22 based on month 7 forecast)

The budget allocation for this contract is £767,200 per year, with a budgeted income of £159,000 from recharging DOLS. In 20/21 contract spend was £1.05m. The proposed contract value for 22/23 is £1.04m which exceeds the budget available.

At present, the Advocacy service benefits from additional grant funding which stood at £329,627 in both 19/20 and 20/21. This sits alongside the recharges to DOLS and offsets some of the additional contract spend. The table below breaks down the total overspend on the business unit.

Variations against budget allocations				
		20/21	19/20	18/19
Income	Government Grants	(15,627)	(15,627)	(9,778)
	Recharges	(48,665)	(79,526)	(108,225)
Expenditure	Voluntary Action Sheffield	(30,048)	(30,048)	(21)
	Advocacy Contract	285,433	194,355	184,139
		191,093	69,154	66,115

Spend on the advocacy contract has been continually greater than the allocated budget, even prior to Covid-19. Current levels of overspend are dependent on the continual underspend against budget on the VAS contract, as well as increased income from government grants and recharges. If the grant was to come to an end, or if recharges reduce going forwards, then the level of overspend will increase further above current levels.

The requested extension will total an overall contract period of 6 years. This must be compliant under the Public Procurement Regulations (PCR) 2015. The Council can seek to rely upon Regulation 72 of PCR 2015, which is detailed in section 4.3.

If this request is approved, then The Sheffield Advocacy Hub will be offered the contract extension and must sign and return the extended contract to remain as the active provider to the extended contract.

Commercial Services recommend that we extend this contract, by way of variation to the duration of the current contract with The Sheffield Advocacy Hub for a further 12 months, to April 30th 2023.

6.3 Legal Implications

6.3.1 Under the Care Act 2014, local authorities have duties to arrange an independent advocate for adults, as part of their own assessment and care planning and care reviews and to those in their role as carers as well as for adults who are subject to a safeguarding enquiry or Safeguarding Adults Review. The duties also apply to children who are approaching the transition to adult care and support, when a child's needs assessment is carried out, and when a young carer's assessment is undertaken.

6.3.2 Under the Mental Capacity Act 2005, responsible bodies, the NHS and local authorities all have a duty to make sure that independent mental capacity advocates are available to represent people who lack capacity to make specific decisions and to safeguard the rights of people detained under the Mental Health Act 2007 and those on community treatment orders (CTOs).

6.3.3 Under the Health and Social Care Act 2012, local authorities have a duty to commission a service to provide support to people who want to make a complaint about the NHS and need some support to do this.

6.3.4 It is submitted that it is possible to set out a legal case for the 12-month extension to the contract under Reg 72(1)(e) and (8) of the Public Contract Regulations 2015 (PCR 2015).

6.3.5 It is arguable that:

- The 12-month extension would not render the contract materially different in character from the one initially concluded (Reg 72(8)(a)), as it relates to the same services on the same terms;
- Had a six-month term already been set for the contract, it would not have allowed for the admission of other candidates/acceptance of other tenders/attracted additional participants (Reg 72(8)(b)) – Commercial Services have advised that the advocacy services market is small, with few participants;
- The extension does not change the economic balance in favour of the provider (Reg 72(8)(c));
- The scope of the contract remains the same (Reg 72(8)(d)) – it is for the same services on the same terms; and
- A new provider will not be replacing the original provider (Reg 72(8)(e)).

6.3.6 On this basis, there is an arguable legal case that the contract extension can be justified under Reg 72(8) PCR 2015. However, this does not eliminate the small risk of legal challenge from disgruntled providers and

any decision must bear this risk in mind.

6.3.7 The European Convention on Human Rights requires local authorities to take into account their 'positive obligations' to actively promote and protect the rights of people as described in the Convention and maintains that providers of publicly funded home care should consider themselves bound by the Human Rights Act 1998.

6.4 Other Implications

6.4.1 The contract is delivered by specialist partners in the voluntary sector who are still recovering from COVID pressures. They are currently heavily involved in supporting the social care transformation and recovery work taking place in Adult Social Care by providing advocacy support for people who are impacted by the changes underway . There would be a risk that the providers in the local market would not be in a position to tender for this contract if the extension was shorter due to the pressure on their resources as a result of the above factors.

7. **ALTERNATIVE OPTIONS CONSIDERED**

7.1 A light touch retender was considered instead of an extension; however, this was not supported by Legal or Commercial Services as it was seen as being non-compliant with the Public Contracts Regulations 2015, given the size of the market and cost.

8. **REASONS FOR RECOMMENDATIONS**

8.1 Should the contract expire without re-tender or extension, then we would be unable to contract any further Advocacy services via the existing contracting arrangements.

8.2 We will be unable therefore to apply in an equitable manner our Statutory duty under the Care Act 2014, Mental Capacity Act 2005, The Health and Social Care Act 2012 and the Mental Health Act 2007 to maintain a stable and sustainable care market.

8.3 A 12-month extension will ensure that alongside measuring the impact of the legislation change we will be able to adhere to the 6-month procurement lead in time required.