



Report to Policy Committee

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

Report of: Strategic Director Adult Care and Wellbeing
Report to: Adult Health and Social Care Policy Committee
Date of Decision: 16th March 2023
Subject: Advocacy Services – Current and Future

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				
Has appropriate consultation taken place? See notes below	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Has a Climate Impact Assessment (CIA) been undertaken?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Does the report contain confidential or exempt information?	Yes	<input checked="" type="checkbox"/>	No	<input 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: -				
<i>Appendix 2 is not for publication because it contains exempt information under Paragraphs 3 and 5 of Schedule 12A of the Local Government Act 1972 (as amended).</i>				

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 2023, to meet the Council's 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.

This report also sets out the Council's future intentions for the procurement of Advocacy Services, which will be subject to separate Council approval.

Recommendations:

It is recommended that the Adult Health and Social Care Policy Committee:

- Approve the continuation of the current commissioning strategy and the extension of the Sheffield Advocacy Hub contract with Sheffield Citizens' Advice and Law Centre by 12 months.
- Endorses that proposals for retender for Advocacy Services are brought to the Adult Health and Social Care Policy Committee by July 2023.

Background Papers:

Appendix 1 – Equality Impact Assessment

Appendix 2 – Legal Implications

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: Laura Foster
		Legal: Richard Marik
		Equalities & Consultation: Ed Sexton
		Climate: Jessica Rick
	<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	SLB member who approved submission:	Alexis Chappell
3	Committee Chair consulted:	<i>Cllrs Angela Argenzio and George Lindars-Hammond</i>
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 Committee by the SLB 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: 27/02/2023	

1. PROPOSAL

- 1.1 The proposal is for the Council to commission a 12-month extension to the Advocacy Services with Sheffield Citizens Advice and Law Centre (SCALC) (01/04/2023 – 31/03/2024) with an estimated value of £1.23m.
- 1.2 The Council entered a 5-year (3+1+1) services agreement with SCALC in April 2017 (£4,465,695 value) and was extended by a year (April 2022 – April 2023 with a value of £1.03m) following approval from the Co-operative Executive on 24 March 2022 due to the imminent introduction of LPS legislation and the unknown impact it will have on advocacy services and demand.
- 1.3 Resource pressures and continuing uncertainties surrounding the introduction of Liberty Protection Safeguards legislation (and the unknown impact it will have on advocacy services and demand) mean there is insufficient time to re-tender for services before the current contract expiry on 31 March 2023.

Background

- 1.4 The Council 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.
- 1.5 The Council also has a duty under the Care Act 2014 to provide an independent advocate for adults where needed 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.
- 1.6 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. If it appears to the authority that a person has care and support needs, then a judgement must be made as to:
 - whether that person has substantial difficulty in being involved (i.e., difficulty in understanding relevant information; retaining information; using or weighing information; and/or communicating views, wishes and feelings.)
 - if there is an absence of an appropriate individual to support them.
- 1.7 An independent advocate must be appointed to support and represent the person for the purpose of assisting their involvement if these two conditions are met and if the individual is required to take part in one or more of the following processes described in the Care Act:
 - a needs assessment
 - a carer's assessment
 - the preparation of a care and support or support plan
 - a review of a care and support or support plan
 - a child's needs assessment
 - a child's carer's assessment
 - a young carer's assessment
 - a safeguarding enquiry

- a safeguarding adult review

1.8 The advocacy role may also involve assisting a person to challenge a decision or process made by the local authority; and where a person cannot challenge the decision even with assistance, then to challenge it on their behalf.

1.9 In Sheffield, we fulfil these duties through a contract with Sheffield Citizens Advice and Law Centre who deliver the Sheffield Advocacy Hub providing Advocacy Services for the Council. The Sheffield Advocacy Hub provides a single point of contact for anyone requiring adult advocacy services. The advocacy services under the current contract include:

- Care Act advocacy
- Independent mental health advocacy (IMHA)
- Independent mental capacity advocacy (IMCA)
- Independent mental capacity advocacy with a focus on deprivation of liberty (DOLS)
- NHS complaints advocacy
- Relevant person's representative advocacy (RPR)

1.10 Further information on the service provided can be found at the Sheffield Advocacy Hub website: [Sheffield Advocacy Hub \(sheffieldadvocacyhub.org.uk\)](http://sheffieldadvocacyhub.org.uk)

1.11 Sheffield Advocacy Hub receive an average of 160 referrals per month for various advocacy types, typically completing 2,705 hours of advocacy support.

Table 1: Breakdown of delivery and cost for Qtr. 3 22/23		
Type Advocacy	Advocacy Referral Numbers	Percentage of Referrals
Care act	109	23%
Independent Mental Health Advocate	78	16.50%
Independent Mental Capacity Advocate	105	22.25%
Learning disability	12	2.50%
NHS complaints	41	8.70%
Relevant Person Representative	127	27%
Total	472	

Rationale for extension

1.12 The timescale for the introduction of Liberty Protection Safeguards (LPS) was pushed back from the original date in Oct 2020 to April 2022 and has recently been pushed back further to an unknown date. This new legislation which will be replacing Deprivation of Liberty Safeguards, is due to have a wider remit; processing more court of protection applications relating to individuals being restricted in care setting, the community and including a new area of focus of 16–

18-year-olds.

- 1.13 This is likely to have an increase on the demand for IMCA (independent mental capacity advocates). The consultation advised of an additional cost pressure involved in the implementation of LPS and recommended that additional funds are made available from central government to support this.
- 1.14 Should the current contract with Sheffield Citizens Advice and Law Centre expire without re-tender or extension, then the Council would be unable to contract any further Advocacy services via the existing contracting arrangements.
- 1.15 If there was no re-tender or extension, advocacy support could only be arranged via a spot purchase - which is not recommended as the most efficient or effective contractual process. 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.
- 1.16 Alternatively, advocacy would need to be arranged via a direct payment – which may put 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.
- 1.17 Resource pressures and continuing uncertainties surrounding the introduction of LPS legislation (and the unknown impact it will have on advocacy services and demand) mean there is insufficient time to re-tender for services before the current contract expiry on 31 March 2023
- 1.18 It is therefore proposed that the Council commission a 12-month extension to the Sheffield Advocacy Hub contract, with an estimated value of £1.23m, so that the Council can continue to provide Advocacy Services and meet its statutory duties under the Care Act 2014, Mental Health Act 2007.

Going forward

- 1.19 It is proposed to request approval at the Policy Committee in June 2023 to procure a new service contract for the delivery of Advocacy Services which will commence on the expiry of the current contract (April 2024).
- 1.20 It is planned to commission a new service contract for the delivery of Advocacy Services which will commence on the expiry of the current contract (April 2024). It is intended that the commissioning cycle will start immediately to allow for the procurement timescale within the years extension.

2. HOW DOES THIS DECISION CONTRIBUTE?

- 2.1 Sheffield City Council Corporate Delivery Plan outlines six strategic goals for the city. The Current arrangements for the delivery of Advocacy services and the

proposal to extend the current contract contributes most significantly to:

- **'Enabling adults to live the life that they want to live'**: Advocacy services are essential in providing voice for people and supporting the residents of Sheffield to get the support they want from social care and health services.
- **'Involve our citizens in the decisions that affect them and their communities'** – Advocacy is a key partner supporting the residents of Sheffield to participate in discussions about issues that affect them and their communities.

2.2 The proposal to extend the current contract will also ensure that we continue to meet the ambitions within the Joint Health and Wellbeing Strategy that **everyone has access to quality care**.

2.3 Sheffield City Council Adult Health and Social Care Strategic Plan (2021 – 2030) outlines in its vision that 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.

2.4 We have developed an [Adult Health and Social Care Strategy](#) and [delivery plan](#) to set out our vision for 2022 to 2030. Called 'Living the life you want to live', it is about how we work together to help the people of Sheffield to live long, healthy and fulfilled lives. Our Adult Social Care Vision is that:

everyone in Sheffield lives in a place they can call home, in communities that care, doing things that matter to them, celebrated for who they are - and when they need it, they receive care and support that prioritises independence, choice, and recovery.

2.5 The vision is centred around delivery of five outcomes and six commitments. Our outcomes help to make our vision real – they are about what we want to focus on getting right. Our commitments are guiding principles we will follow and describe how we will achieve our outcomes and highlight what we want to do better.

2.6 The proposals in this report align with our vision and primarily support the delivery of **Commitment 4: 'Make sure support is led by "what matters to you"'**. Advocacy support can bridge a gap in communication and has 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.

2.7 A risk has been identified that the expiration of the contract without a new contract in place to start may impact upon the accessibility of statutory advocacy services.

3. HAS THERE BEEN ANY CONSULTATION?

3.1 A complete robust consultation with people using the advocacy service, family members, carers and stakeholders will be complete for the recommissioning of advocacy services. It is also planned to involve people using advocacy services in the retender and commissioning to ensure people are at heart of all we do.

- 3.2 For the extension, the very low number of complaints and multiple stories of difference, however, provide some evidence of positive experience for people who have been supported by the advocacy service were used to inform a proposal to extend with the current provider.
- 3.3 In addition, feedback from both commissioning officers and assessment and care management regards the current provider as used to inform the extension. All provided positive feedback, with all officers reporting 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.
- 3.4 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. 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.
- 3.5 Once the change to the legislation takes place and Liberty Protection Safeguards is embedded further and the impact of this legislation is understood fully, the intention is for co-production leading to co-design for a future service.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality Implications

- 4.1.1 Decisions need to consider 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.
- 4.1.2 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.
- 4.1.3 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. 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.

4.1.4 As such, the extension to the framework 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.
- Positives impacts upon persons who share protected characteristics would be maintained because of the extension.

4.1.5 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.

4.2 Financial and Commercial Implications

4.2.1 For 22/23, the gross budget for the Advocacy business unit is £1,007,200. This includes the Advocacy contract c. £1,000,000 and the Healthwatch contract which is c. £210,000.

4.2.2 There is currently insufficient budget available to cover the cost of both contracts. At month 10, there was a forecast overspend of £125,000. An in-year uplift to the contract rate was recently agreed by Leadership which will further increase overspend in 22/23.

4.2.3 The proposed extension to the contract is valued at £1,230,000, which reflects the uplifted contract rate to £38 and forecast activity levels.

4.2.4 At present, the Advocacy service receives grant funding, and recharge income from DOLs. Recharges have been consistently higher than budgeted due to increased demand within the service. This increased income is included within forecasts and mitigates some of the pressure faced. Should there be a reduction in the recharges from the DOLs service, or the grant comes to an end, the level of overspend will further increase.

4.2.5 For 23/24, a standstill budget approach has been adopted because of the Council's financial position, and each committee has been asked to work within their budget envelope. Any additional pressures arising from a loss of income or uplifting the contract will need to be balanced with mitigations within the wider service.

4.3 Legal Implications

4.3.1 The Council has 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.

4.3.2 The Council also has a duty under the Care Act 2014 to provide an independent advocate for adults where needed as part of assessment and care management including safeguarding enquiries.

4.3.3 Council contracting arrangements are permitted by the Local Government (Contracts) Act 1997 and the extension to this contract by way of contract by way of variation should ensure that the Council meets these duties.

4.3.4 It is possible to form a legal argument that the proposed contract modification is not substantial for the purposes of Regulation 72(e) of the Public Contracts Regulations 2015:

- The contract will be materially similar in character following the modification (reg 72(8)(a)) – services and payment remain unchanged.
- The economic balance is not changed in the favour of the provider (reg 72(8)(c) – the economic balance remains unchanged.
- The scope of the contract is not significantly extended (reg 72(8)(d)) – the scope of the services has not been extended.

4.3.5 More fundamentally, the Lead Officer of this report has advised that the impact of an extended term on the original procurement process would not have any significant effect on that process to the extent that the Council would be in breach of reg 72(e) (and reg 72(8)(b)).

4.3.6 Further Legal Implications are set out in Appendix 2.

4.4 Climate Implications

4.4.1 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.

4.4.2 Sheffield Advocacy Hub have been operating under contract since April 2017 on a 3-year initial contract with a plus 1 plus 1 extension. This was extended again for the period 1st April 2022 – 1st April 2023 due to the imminent introduction of LPS legislation and the unknown impact it will have on advocacy services and demand. Due to the delays, SCC have requested a further 12-month extension & will now recommission the service.

4.4.3 Advocacy providers will be able to raise awareness around climate impact both with their staff and people they support by improving health and wellbeing, specifically connecting with the local community, promoting active travel, and supporting people to manage fuel poverty by raising awareness around energy efficiency.

5. ALTERNATIVE OPTIONS CONSIDERED

5.1

Options	Risks	Mitigation
Option 1 - Allow contract to lapse	<p>SCC would not meet statutory responsibilities</p> <p>SCC would not have an overview on quality</p> <p>SCC would not have a say in the hourly rate cost</p> <p>SCC would not have an overview of referral rates</p> <p>SCC would not have an overview of spend</p> <p>SCC would not have an overview on throughput</p> <p>SCC would not have an overview on waiting lists</p>	SCC could spot purchase advocacy services
Option 2 - Offer extension at current hourly rate	The provider would likely not accept this offer. Concerns have been already raised about financial sustainability and recruitment & retention.	SCC could spot purchase advocacy services from a number of separate entities
Option 3 - Request extension for less than 12 months	<p>SCC would be unable to complete the commissioning cycle in time for retender - See appendix 1 for delivery plan</p> <p>SCC would not have time to carry out proportional consultation</p>	Robust resource from commercial services, legal and commissioning would allow for a faster turnaround
Option 4 - Request extension for more than 12 months	SCC would likely be in breach of procurement regulations	None

6. REASONS FOR RECOMMENDATIONS

- 6.1 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.
- 6.2 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.
- 6.3 A 12-month extension will ensure that the commissioning cycle can be completed in a considered manner with robust engagement and consultation.