

# Brighton & Hove City Council

## Agenda Item 84

### Cabinet

**Subject:** Procurement of Contract for the provision of Advocacy Services for Adults

**Date of meeting:** 17 October 2024

**Report of:** Cabinet Member for Adult Social Care

**Contact Officer:** Name: Steve Hook, Acting Corporate Director – Housing Care & Wellbeing (Care & Wellbeing Lead)

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**Ward(s) affected:** All

**Key Decision:** Yes

**Reason(s) Key:** Expenditure which is, or the making of savings which are, significant having regard to the expenditure of the City Council's budget, namely above £1,000,000.

### For general release

#### 1. Purpose of the report and policy context

1.1. This report seeks cabinet approval to procure a Contract for the provision of Advocacy Services for Adults for a term of five (5) years with an option to extend the contract period by further two (2) years.

1.2. The Contract will provide a service delivering all statutory advocacy requirements for adults in Brighton and Hove, as well as community advocacy for health and social care issues. The recommendations in this report directly support Outcomes 2, 3 and 4 of the Council Plan.

#### 2. Recommendations

2.1. That Cabinet approves the procurement and award of a five-year Contract with an option to extend for a further two years for the provision of advocacy services and grants delegated authority to the Corporate Director of Housing Care & Wellbeing:

- (i) To take all steps necessary or incidental to undertake the procurement process;
- (ii) Award the Contract to the winning bidder;
- (iii) Authorise any modifications and extensions to the Contract, subject to satisfactory performance of the provider, during the contract period.

### 3. Context and background information

#### Brighton & Hove City Council plan 2023- 2027

3.1. The proposed advocacy service to be reprocured will align with the following Council Plan outcomes:

- **Outcome 2: A fair and inclusive city: An inclusive and fairer city**

The advocacy service will support people who experience barriers that can exclude them from health and social care services because of their identity, background or circumstances. The service will be designed to embed equality, diversity and inclusion in its delivery, and empowerment is an essential element of advocacy.

- **Outcome 3: A healthy city where people thrive: Living and ageing well**

Advocacy supports people to express their needs efficiently to health and social care services, empowers people to be involved in their care and support, can identify earlier or preventative interventions and promote community and social support networks for people, all of which can help to address health inequalities in the city. Advocacy can also ensure that people access the information and support they need to stay healthy and independent, and to access the care and support they need. Advocacy can also lead to health and social care services being more inclusive and accessible, both by supporting people to highlight barriers they are experiencing in accessing services individually, and also by providing feedback to services generally to identify areas where they are not accessible enough.

- **Outcome 4: A responsive council with well-run services**

Advocacy provides valuable feedback to the council about barriers to access and to understand the needs of its diverse customers.

3.2. Improving mental health and wellbeing has been identified as a key priority for the city by the Brighton and Hove Health and Wellbeing Board, in its strategy for the council and NHS Sussex.

3.3. By funding the provision of advocacy services, the Council enables people to take action to help people secure their rights, make their views and wishes heard and support people to get the services that they need. Advocates and advocacy providers provide independent support, working in partnership with the people they support. Case studies of the advocacy support provided in the current Contract, and outcomes achieved are included in the Appendix to this report.

3.4. Advocacy is especially important for people who find it difficult to express their views and wishes. This can be for a variety of reasons, such as disability, health conditions or communication difficulties and can be compounded by particularly complex processes to navigate including health and social care pathways. Advocacy providers also provide valuable

feedback to Adult Social Care and NHS services to make them more accessible to people.

### **The Council's Current Contract Arrangements**

- 3.5. Brighton and Hove City Council ('the Council') is currently in a joint contract for the provision of advocacy services with NHS Sussex (Brighton and Hove), West Sussex County Council (WSCC) and East Sussex County Council (ESCC) ("the Commissioners"). The current contract commenced on 1 July 2019 and expires on 30 June 2025, having been extended by two (2) years as permitted by the contract.
- 3.6. There are a number of statutory duties on the Council to provide advocacy services, all of which are provided for Brighton and Hove through the current contract. The statutory advocacy types in the current contract are listed below, as well as the local authority areas they are provided for:
- 3.7. Independent Mental Capacity Advocacy (IMCA) and Relevant Person's Paid Representatives (RPPR) under the Mental Capacity Act 2005 (Provided for BHCC, ESCC and WSCC)  
An IMCA works with someone who has been assessed as lacking capacity under the Mental Capacity Act to make specific important decisions about where they live and serious medical treatment options. An IMCA is mainly instructed to represent someone where they do not have someone independent of services, such as a family member or friend, who is able to represent them. An RPPR supports a person who has been deprived of their liberty and represents and supports them in relation to their Deprivation of Liberty Safeguards and exercise their rights under the Mental Capacity Act.
- 3.8. Independent Care Act Advocacy (ICAA) under the Care Act 2014 (Provided for BHCC and WSCC)  
An ICAA supports someone who has substantial difficulty being involved in decisions about their care and support, and who does not have an appropriate individual to support them.
- 3.9. Independent Mental Health Advocacy (IMHA) under the Mental Health Act 2007 (Provided for BHCC)  
An IMHA supports someone detained under the Mental Health Act or on a Community Treatment Order to understand their rights and how to use them.
- 3.10. Independent Health Complaints Advocacy (IHCA) under the Health and Social Care Act 2012 (Provided for BHCC)  
An IHCA supports someone with a complaint about any NHS funded care or treatment they are unhappy with.
- 3.11. The current contract also includes community advocacy for health and social care issues. There is no statutory duty to provide community advocacy, but the Council and NHS Sussex (Brighton and Hove) are committed to funding this provision to support with health and social care issues, because this additional provision plays an important and preventative role in supporting individuals, the health and social care system and communities. If NHS

Sussex withdraws or reduces its funding for advocacy during the proposed new Contract, there will be contracting arrangements for the provider to work with the Commissioners to reduce or end the non-statutory advocacy service element.

- 3.12. The current contract is delivered by a lead provider that provides all of the statutory advocacy other than IMHA. The lead provider subcontracts with five community and voluntary sector providers in the city who provide specialist community advocacy and IMHA throughputs.
- 3.13. Overall, the service has performed well over the life of the contract. The lead provider model has helped to provide a more seamless advocacy provision for the city. In 2023/24, the targets for responsiveness and number of cases to be opened were met for the majority of advocacy service types. There has been positive feedback from people using the services as well as professional and stakeholder feedback. Outcome data has given numerical data and cases studies showing how advocacy has supported people to have an increased voice and personal control, upheld their rights, increased their independence and challenged decisions.
- 3.14. Commissioning in partnership with other local authorities and NHS Sussex has been particularly valuable in addressing issues in relation to the joint RPPR element of the service, which are detailed below and are a common challenge in local authorities nationally.
- 3.15. The main challenge during the current contract has been in relation to the Relevant Person Paid Representative (RPPR) element which is part of the Independent Mental Capacity Advocacy service. When people are deprived of their liberty, they must have a representative who can help make sure their views, wishes and rights are respected. RPPRs are provided by the current provider for people who do not have an appropriate friend or relative to act as a representative. A combination of increased demand and recruitment and retention issues has led to a growing waiting list for RPPRs in Brighton and Hove, West Sussex and East Sussex. The commissioners are working closely with the current provider to improve this.
- 3.16. To improve this in the new contract, the specification will have additional information about RPPR service expectations to ensure that it is efficient as possible. There will also be additional KPIs set to better assess outputs and throughput for the contract management process. Monitoring will continue to be carried out quarterly with quarterly contract reviews.

### **Contribution by the Commissioners**

The table below sets out the individual contributions from all commissioning partners alongside the advocacy elements provided in the current contract.

Commissioner	Current annual contribution	Advocacy provided by current contract
ESCC	£212,072	Independent Mental Capacity Advocacy Relevant Person's Paid Representative
WSSC	£363,876	Independent Mental Capacity Advocacy Relevant Person's Paid Representative Independent Care Act Advocacy
NHS Sussex (B&H)	£260,304	Independent Mental Capacity Advocacy
BHCC	£324,606	Relevant Person's Paid Representative Independent Care Act Advocacy Independent Mental Health Act Advocacy Independent Health Complaints Advocacy Community advocacy
Total	£1,160,858	

- 3.17. It is proposed that the current council spend is taken into the procurement of the new contract. The current NHS Sussex (Brighton and Hove) spend is also proposed to remain the same, as is the ESCC spend. WSSC are currently seeking confirmation about their proposed spend.
- 3.18. The proposed contracting arrangements mean that flexibility can be applied on the Brighton and Hove elements in the contract if there are changes in demand during the life of the contract. There is the ability to reduce the spending on community advocacy and increase the spend on statutory advocacy elements should there be a significant increase in demand for these during the contract.

### **Procurement of the new contract for the provision of Advocacy Services**

- 3.19. The Commissioners have made the decision that the most effective delivery model is to continue the provision of advocacy services through a single contract. The Commissioners will contract with one service provider to deliver the services. The Service Provider may sub-contract with specialist providers ('Sub-Contractors') in the delivery of parts of the services but will remain responsible for the delivery of all elements of the services.
- 3.20. The reprocured services will consist of the advocacy services set out in sections 3.4 and 3.5. It is also proposed that the Independent Mental Health Advocacy and Community Mental Health Advocacy for West Sussex will be

included in the new contract (this is funded by NHS Sussex who currently contract for these advocacy elements separately).

- 3.21. The specification will be outcome focused, with outcomes in line with nationally developed Advocacy Outcomes Framework by the National Development Team for Inclusion ([Advocacy framework.pdf \(ndti.org.uk\)](https://www.ndti.org.uk)). There will be social value and sustainability outcomes, which will be further developed with the provider(s) at the start of the contract, and which will be based on their response to these questions in their tender response.
- 3.22. There will also be target outputs that the provider(s) will have to meet with minimum targets for the number of cases opened for each type of advocacy in the contract.
- 3.23. Market engagement with advocacy providers has been carried out, asking for their perspective on how the breadth of services across Brighton and Hove, West Sussex and East Sussex can best be delivered. The consensus was that a lead provider model would be most likely to do this.
- 3.24. The joint commissioners that contract manage the current contract also consider the lead provider model to be the most appropriate to deliver the services in the proposed advocacy contract. A lead provider organisation leading on taking referrals, triaging and signposting where necessary through a single point of access (while maintaining a no wrong door approach) ensures that people needing advocacy and referrers know where to go, and reduce the chance of people falling between gaps.
- 3.25. If authority is granted, a tender will be issued in November, evaluations carried out in January and a contract awarded to start on 1<sup>st</sup> July 2025, with a three-month mobilisation period.
- 3.26. BHCC will lead the procurement and also be responsible for managing the contract during the contract period. ESCC and WSCC will pay an annual management fee to BHCC for this.

#### **4. Analysis and consideration of alternative options**

##### **Alternative Options**

##### **Option 1 – End current contract and take no further action.**

- 4.1. The Council will breach its duties to commission the statutory advocacy services as set out in section 3.4 by not re-procuring a new contract commencing from July 2025.

##### **Option 2 - Commission statutory advocacy only and not community advocacy.**

- 4.2. The Council would be meeting its statutory duties in relation to commissioning advocacy. However, community advocacy has been recognised to prevent crisis and support people in addressing barriers in accessing health and social care services and assessments, bearing in mind that not many people will not be entitled to any statutory advocacy. Reduction or removal of community

advocacy is also likely to increase pressure on health and social care services generally if people are not able to access support at an earlier stage or be supported to identify earlier to preventative health and social care options, as well as increase pressure on statutory advocacy services.

### **Option 3 – BHCC to commission advocacy services independently of the other Commissioners**

- 4.3. A larger contract over a wider area is more likely to benefit from economies of scale. A contract providing advocacy for Brighton and Hove, East Sussex and West Sussex is also more likely to be more appealing to a potential lead provider than a contract that only provides advocacy for Brighton and Hove. With the proposed addition of advocacy for NHS Sussex (West Sussex), a joint contract would also benefit NHS Sussex as it would deliver all of their advocacy and would support integrated health and social care commissioning.

### **Option 4 – Commission Brighton and Hove statutory and non-statutory advocacy elements under separate contracts**

- 4.4. This would significantly increase the contract management time required compared to a single contract. For a single contract, the specification can be designed so that there can be flex of resources across statutory and non-statutory services, should there be demand and pressure on statutory advocacy services. This flexibility would not be possible if there were multiple contracts.

## **5. Community engagement and consultation**

- 5.1. In the lead up to this procurement activity, engagement has been carried out with people who have used community advocacy services. Feedback shows that people really value the community advocacy offer, and in particular value having a named contact and an advocate from a similar background, do not want to tell their story multiple times, and view expert/specialist advocates for certain communities as important.
- 5.2. Engagement has also been carried out with the Deprivation of Liberty Safeguards (DoLS) teams and legal teams within Brighton and Hove City Council, East Sussex County Council and West Sussex County Council to inform operational requirements for the Relevant Person Paid Representative (RPPR) service, which has then informed the specification and KPIs for this element of the advocacy services.
- 5.3. Engagement with representatives from the current lead provider and five subcontractors took place on 3<sup>rd</sup> September, reflecting on what has worked well in the current contract and what could have been done differently. The feedback was that the lead provider model has worked well, and partnership working has been built during the contract, with room to improve on this even more.

- 5.4. A Market Engagement Event is planned for 24<sup>th</sup> October to further engage, inform and guide any potential providers of the process, requirements and lessons learnt.
- 5.5. The proposed procurement approach was presented to the Procurement Lead Member on 11th September 2024, who supported the preferred option detailed in this paper.

## **6. Financial implications**

- 6.1. This report highlights the necessity to procure new Advocacy services for adults, as the current contract will expire at the end of June 2025. It is proposed that the annual contract value remains unchanged. As a result, there is no anticipated financial impact on BHCC.

Name of finance officer consulted: Jamiu Ibraheem      Date consulted: 13/09/24

## **7. Legal implications**

- 7.1. The Council is required to comply with the Public Contracts Regulations 2015 (PCR 2015) in relation to the procurement and award of contracts above the relevant financial thresholds for services, supplies and works. This contract has a value over the PCR 2015 threshold. The services outlined in this report fall within Schedule 3 of the Public Contracts Regulations 2015 and exceed the relevant financial threshold for light touch regime services (£663,540 inclusive of VAT). The procurement process for the light touch regime is not unduly prescribed but must accord with the fundamental principles of transparency and equal treatment of economic operators.
- 7.2. The Council must also comply with its Contract Standing Orders (CSOs) which apply to Social Care & Public Health services as set out in Section B of the CSOs.

Name of lawyer consulted: Sabina Cherevichenko      Date consulted: 12/09/2024

## **8. Equalities implications**

- 8.1. The Equality Impact Assessment has not identified disproportionate impacts on the basis of the community advocacy offer being retained in the recommission. Additional actions and areas for improvement have been identified and will be incorporated into the new specification for the service along. These can be delivered within the existing budget, with a focus on improved contract monitoring and engagement when the new service has commenced.

## **9. Sustainability implications**

- 9.1. Sustainability will form part of the evaluation of tender submissions, to address how they will support [Brighton & Hove City Council's sustainability targets and ambitions, with a focus also on how this will be delivered](#) across



each of the Commissioning organisations' geographical areas. This will be weighted at 10% of the overall quality score.

## **10. Health and wellbeing implications**

- 10.1. The proposed plan and investment will have a strong alignment with the following Council Plan outcomes, as detailed in section 3.10 of this report:
- Outcome 2 A fair and inclusive city
  - Outcome 3 A healthy city where people thrive: Living and ageing well
  - Outcome 4 A responsive council with well-run services

## **11. Procurement implications**

- 11.1. The Procurement Contract Regulations (PCR) 2015 classifies some social care services and other specific services as "Light Touch". These services are subject to different, more flexible rules and thresholds than other public services.
- 11.2. The Advocacy services fall within the ambit of the 'Light Touch' of the PCR's 2015. Therefore, the Council must comply with the rules set out by the PCR's 2015, as well as the Council's Contract Standing Orders.
- 11.3. It is proposed to proceed with an open procedure under the Light Touch Regime to procure a lead provider model for these services.
- 11.4. This route to market will allow any interested provider to submit a bid in response to the advert and does not restrict SME and VCSE organisations.
- 11.5. It is proposed to proceed with 80% quality and 20% price weightings. The financial envelope is restricted as it is in line with the budget from the previous procurement 6 years ago. It is expected that there will be little variation in the prices submitted across all Bidders to deliver the Advocacy services and therefore, following a modelling exercise, a higher weighting is assigned to quality. The Commissioning Organisations are therefore looking for Bidders to explore efficiencies in how the service is delivered to maintain the financial envelope. Bids submitted over the stated financial envelope will be rejected.

## **12. Crime and disorder implications**

- 12.1. There are no crime and disorder implications.

## **13. Conclusion**

- 13.1. The recommendation to Cabinet is to delegate authority to procure and award a pan-Sussex advocacy services as detailed in the report.
- 13.2. The new contract will support the Council to meet its statutory duties to commission advocacy and also to continue to provide a community advocacy

that has a preventative benefit for both people using services, and health and social care services.

## **Supporting Documentation Appendices**

1. Case Studies of Advocacy Support