

PROCUREMENT OF ADVOCACY AND RELATED SERVICES

Cabinet Date	28 September 2016
Older People Long Term Support Children & Young People and Strategic Commissioning	Councillor Dorcas Binns Councillor Kathy Williams Councillor Paul McLain
Key Decision	Yes
Background Documents	Relevant national policy guidance for each service in scope
Location/Contact for inspection of Background Documents	For details of the national policy documents used for each service in scope contact Fiona Jones, Outcomes Manager, 01452 328538 Fiona.jones@gloucestershire.gov.uk
Main Consultees	Providers Service Users Public Healthwatch Gloucestershire Commissioners GCC and Gloucestershire Clinical Commissioning Group GCC and NHS Operational staff NHS and GCC Complaints Managers Other local authorities
Planned Dates	New Contracts start date – 1 st April 2017
Divisional Councillor	All
Officer	Margaret Willcox, Commissioning Director, Adults (& DASS) 01452 328468 Margaret.willcox@gloucestershire.gov.uk Linda Uren, Commissioning Director: Children and Families 01452 328471 Linda.uren@gloucestershire.gov.uk

Purpose of Report	<p>To seek approval to procure the specified advocacy services in order to meet the Council's statutory duties and to request delegated authority to award contracts.</p>
Recommendations	<p>1. That Cabinet authorises the Commissioning Director: Adults to:</p> <p><i>(a) Conduct an EU compliant competitive tender process for the award of a 5 year contract (with an initial term of 3 years and an option to extend for a further 2 years) with an estimated maximum total value of up to £3.289m for the delivery of Independent Health and Social Care Advocacy Service for Adults and</i></p> <p><i>(b) Upon conclusion of the competitive tender process, in consultation with Cabinet Member for Older People, to enter into a contract with the preferred provider who is evaluated as achieving the highest score against the evaluation criteria set by the Council. In the event that that the preferred bidder for the contract is either unable or unwilling to enter into that contract with the Council then Officers are authorised to enter into such contract with the next willing highest placed suitably qualified provider.</i></p> <p>2. That Cabinet authorises the Commissioning Director: Children and Families, to:</p> <p><i>(a) Conduct an EU compliant competitive tender process for the award of a 5 year contract (with an initial term of 3 years and an option to extend for a further 2 years) with an estimated maximum total value of up to £550k for the delivery of Independent Social Care Advocacy for Children in Care and Disabled Children the "Children's Service" ;</i></p> <p><i>(b) Conduct an EU compliant competitive tender process for the award of a 7 year contract (with an initial term of 5 years and an option to extend for a further 2 years) with an estimated maximum total value of up to £280k for the delivery of Independent Visitors for looked after children and</i></p> <p><i>(c) Upon conclusion of these competitive tender processes, in consultation with Cabinet Member for Children & Young People, to enter into a contract with the preferred provider who is evaluated as achieving the highest score against the evaluation criteria set by the Council for each contract. In the event that that the preferred bidders for the contracts are either unable or unwilling to enter into those contracts with the Council then Officers are authorised to enter into such contracts with the next willing highest placed suitably qualified providers.</i></p>

<p>Reasons for recommendations</p>	<p>To allow for the continued delivery of the statutory advocacy services to the most vulnerable residents in Gloucestershire when the current contractual arrangements end in March 2017.</p>
<p>Resource Implications</p>	<p>The combined value of the three separate contracts is estimated to be in the region of £4.119m which is within existing budgets.</p> <p>Each contract will need to allow for government funding reductions if necessary.</p> <p>The value of the contracts may fluctuate between years and over the lifetime of the contracts. Additional investment may be added in future years in order that the Council continues to meet its statutory duties and the additional value will be reflected in the contract notice.</p> <p>There are potentially TUPE issues within the new model amongst third party providers. No Council staff will be affected. Timescales have been built into the procurement process to take account of these issues and officers will retain oversight of the mobilisation phase.</p>

MAIN REPORT CONTENTS

Background

1. Independent advocacy can assist individuals to understand their choices, make decisions and have their voice heard. The national Advocacy Charter defines advocacy as: *“taking action to help people say what they want, secure their rights, represent their interests and obtain services they need. Advocates and advocacy providers work in partnership with the people they support and take their side. Advocacy promotes social inclusion, equality and social justice”*. The Care Act statutory guidance further defines it as *“supporting a person to understand information, express their needs and wishes, secure their rights, represent their interests and obtain the care and support they need”*. Advocacy can take several forms depending on the individual’s ability and capacity to instruct an advocate.

Current Provision

2. Over time a number of statutory duties to provide independent advocacy have been introduced and Gloucestershire County Council has commissioned these incrementally; sometimes with new contracts and other times using variations to existing contracts. The current contracts are due to finish in March 2017. The collective recommissioning of these services provides an opportunity to take a strategic approach to getting best value, better customer experience and responding to fluctuating demand that is in keeping with the GCC's vision of ‘living within our means’, ‘doing the right thing’ and ‘helping communities help themselves’. It also enables us to commission arrangements to efficiently meet a range of statutory duties including the Care Act 2014; Health & Social Care Act 2012, Mental Health Act 2007, Mental Capacity Act 2005, Children & Families Act 2014 and Children’s Act (various), as well as the local prevention, early intervention and personalisation agendas.
3. The services in scope are listed in Table One below.

Table One: Services in scope

Service	Purpose
1. Independent Health Complaints Advocacy (IHCA)	To enable individuals to make a complaint about NHS care.
2. Independent Mental Health Advocacy (IMHA)	For people who are detained under the Mental Health Act or who are under a Community Treatment Order.
3. Independent Mental Capacity Advocacy (IMCA) including the Relevant Person’s	To help particularly vulnerable people who lack the capacity to make important decisions (therefore covered by the Mental Capacity Act) about serious medical treatment, changes of accommodation, safeguarding concerns and care reviews and who have no family or friends that it would be

Representatives under the Deprivation of Liberty Safeguards (RPR)	appropriate to consult about those decisions. IMCAs will work with and support people who lack capacity, and represent their views to those who are working out their best interests. IMCA are not decision makers.
4. Independent Care Act Advocacy	To involve individuals who would experience substantial difficulty and have no appropriate involver, in key processes and interactions with the LA and other organisations as required for safeguarding enquiries or reviews.
5. Advocacy for children in care, care leavers and children in the child protection system	Empower vulnerable children and young people in care to participate in decisions that effect their lives.
6. Advocacy for children and young people's social care complaints	Empower children and young people in care to participate in decisions that effect their lives and make complaints.
7. Advocacy for disabled children	Empower disabled children and young people in need to participate in decisions that affect their lives. Includes non-instructed advocacy.
8. Independent visitors for children in care	To visit, advise and befriend a looked after child or young person otherwise 'unfriended'

4. Advocacy providers must be independent from statutory organisations and as free from conflict of interest as possible, both in design and operation of advocacy services. They must also actively reduce conflicting interests, in particular where the organisation provides additional services such as housing provision. To practise in most of the circumstances in scope advocates must be trained to specific standards; they are often paid although there are situations in which it is acceptable to use volunteers as advocates. Advocates are not decision makers.
5. There are three organisations currently contracted to provide the services listed in table one however current contract management arrangements do not facilitate a clear overview of services offered. Funding sources are also complex involving the Better Care Fund, the Local Reform and Community Voices Grant as well as base budgets. The total current combined value of these contracts in 2016/17 is expected to be £662.3k.

The proposed future model: Commission groups of services

6. It is recommended that the services in scope should be grouped and procured as three contracts using an EU compliant procurement procedure in accordance with the Public Contracts Regulations 2015. This will result in each contract having a single contractor or single contractor with the option to subcontract with other providers. Table Two sets out the details of the proposed three contracts and their duration.

Table Two: Proposed grouping of services to contracts

<p>Contract 1 Independent Health and Social Care Advocacy (“Adults”)</p> <p>Contract length: 3 years with an option to extend for a further 2 years, 5 years in total</p> <ul style="list-style-type: none"> • Independent Health Complaints Advocacy • Independent Mental Health Advocacy • Independent Mental Capacity Advocacy • Independent Care Act (2014) Advocacy • Independent Advocacy for Adult Social Care Complaints (for those eligible for independent care act advocacy)
<p>Contract 2 Independent Health and Social Care Advocacy for children and young people (“Children’s”)</p> <p>Contract length: 3 years with an option to extend for a further 2 years, 5 years in total</p> <ul style="list-style-type: none"> • Children’s social care complaints • Children and young people subject to child protection, care proceedings and care leavers • Advocacy for children and young people, including non-instructed advocacy for those lacking capacity and SEND advocacy
<p>Contract 3: Independent Visitors for Looked After Children,</p> <p>Contract length: Contract length: 5 years with an option to extend for a further 2 years, 7 years in total.</p> <ul style="list-style-type: none"> • Independent Visitors

7. This model aims to balance the various priorities: ensuring the quality of the provision, available funding, the alignment and sustainability of advocacy services, co-production with current and prospective service users, collaboration with the

market, responding to fluctuating levels of need and efficient tendering and contract management.

Principles and outcomes

8. The common aim of the advocacy legislation and services in scope is to place importance on individuals having control over their lives and decisions. All three contracts will be expected to work to broadly the same principles and outcomes as well as the specific requirements for each individual service. The adults and children's contracts will each have its own triage service which will include support for referrers and those who may wish to self advocate or advocate for another person. The successful bidders will need to develop close and constructive working relationships with information and advice providers as well. This will include making self-help information available and giving people confidence to speak up.
9. The access arrangements will mean that adults, including carers, will be able to access advocacy services efficiently and within agreed timescales. Referrals will be received from health and social care professionals, organisations working on behalf of the Councils as well as via family and friends and by self-referral. The providers will be expected to proactively manage the demand for the services. In conjunction with GCC they will be required to develop and implement a process covering access criteria, the application/referral process and the means of prioritising applications. This will include a protocol and process for out of area referrals.
10. The providers will be required to operate the services within an environment that is constantly changing. New legislation, recent Supreme Court judgments and proposed amendments to existing legislation mean that patterns of delivery will need to change during the term of the proposed contracts. The successful providers will need to be aware of these changes and adopt working practices that are flexible enough to meet future requirements/demands.

Options

11. The following options have been considered and option five is recommended:
 - 1) Do nothing
 - 2) Continue current arrangements
 - 3) Commission all services individually
 - 4) Commission all services together
 - 5) Commission groups of services**
 - 6) Commission all case work individually
12. The five alternatives are not recommended because:
Option 1 – the current arrangements expire in March 2017 and if none of the services are available then the Council would be in breach of its statutory duties and individuals could be exposed to unacceptable risks.

Option 2 – the existing contracts cannot be extended any further and so a new procurement exercise is required. Continuation of the existing model would not realise any efficiencies nor improve customer experience.

Option 3 – this would not realise any economies of scale and it could be confusing for customers as it would require each service to have its own access arrangements.

Option 4 – the market advised against this option as it would require the successful provider to have a very wide range of knowledge and experience and can mean that children and young people, who will be less in number, get overlooked.

Option 6 – this would create an administrative burden and be difficult to quality assure. It would also not realise any economies of scale or offer stability to the provider market.

Officer Advice

13. The recommended option should bring a more coherent approach to commissioning and delivery of these services which is efficient and effective and in keeping with Gloucestershire County Council's vision and values. The Council will be compliant with its legal duties to offer advocacy and independent visitor services in specific circumstances and so afford individuals their statutory rights. Individuals will feel empowered to take the responsibility they want and be more involved in decisions about their selves and their own well-being. The service will provide material for individuals to support them to self advocate.
14. There are also benefits for the successful providers as due to the contract length they will be able to develop the services and respond to need. They will be able to deliver an efficient service by rationalising the management arrangements, developing a sustainable workforce and a more coherent approach to ensuring the advocacy workforce is trained to the required levels.

Risk Assessment

15. There are two main risks associated with these proposals:
 - The Council is unable to meet its statutory responsibilities if the procurement process is unsuccessful, any subsequent transition disrupts the service and/or subsequent provider under performance or insolvency.
 - Services are unable to respond to rising levels of demand associated with new statutory duties (e.g. the Care Act), increased expectations relating to court rulings (e.g. mental capacity) or higher levels of activity (mental health assessments).
16. The risk of market failure should the procurement be unsuccessful is mitigated by market testing and research which suggests that the recommended service model will meet need and that the Council will be able to successfully procure the required services. The risk of disruption during the transition process will be mitigated by requiring all potential providers to provide robust evidence about their ability to mobilise the new contracts. Once the contracts are in place, robust quarterly performance monitoring and financial reporting will be used to mitigate

any potential risks of critical underperformance or insolvency. The annual service reviews will include an assessment of the advocacy market.

17. GCC will look to balance the risk of not meeting its statutory duties and uncertain demand with the need to be financially prudent and only pay for services delivered. Close contract management, including negotiations for any extensions will be used to minimise the financial risk to the Council.

Equalities considerations

18. The provision of independent advocacy and related services contributes to advancing equality of opportunity between people who share a protected characteristic and people who do not share it. The Due Regard Statement completed to inform the decisions for the current provision has been reviewed and updated to support the recommendations of this report. As a result the future performance management arrangements will be used to ensure robust data are available.

Consultation feedback

19. A consultation has taken place to provide customer and stakeholder feedback that has been used to inform the service specification for the contract. Healthwatch Gloucestershire has assisted in gathering views. Feedback has been mainly about the importance of the awareness of the future services and their responsiveness.

Performance Management/Follow-up

20. The specifications will be reviewed annually to assess changes in need and available resources; this will include legislative duties, provider performance, and budget availability. The council will have the option to terminate the contract in circumstances which make the contract untenable.
21. There will be a common approach to the management of these contracts including a performance management workbook for providers to use as well as reporting on quality and outcomes achieved. Over and above this, there will be specific reporting requirements and provision for reviewing the quality of each service. Providers will be required to quality assure services by collecting regular customer feedback and service user experience.

Report Title	PROCUREMENT OF ADVOCACY AND RELATED SERVICES
Statutory Authority	<p>Contract 1:</p> <ul style="list-style-type: none"> • Care Act 2014 • Mental Health Act 1983 (revised Mental Health Act 2007) • Health and Social Care Act 2012 • Mental Capacity Act 2005 <p>Contract 2:</p> <ul style="list-style-type: none"> • Children Act 2014 • Care Act 2014 • Health and Social Care (Community Health Standards) Act 2003 • Adoption and Children Act 2002 • Children (Leaving Care) Act 2000 • The Children Act 1989 <p>Contract 3:</p> <ul style="list-style-type: none"> • Children Act 2014 • The Children Act 1989
Relevant County Council policy	<ul style="list-style-type: none"> • Meeting the Challenge 2 – Together We Can: Gloucestershire, Gloucestershire County Council’s Strategy 2015-18, updated for 2016/17 • County Council Strategy 2015-2018 (updated 2016/17) • Early Help and Children & Young People’s Plan • Building Better Lives Policy • Settled, Secure and Safe lives in Gloucestershire – a policy for supporting people in vulnerable circumstances. • Active Individuals • Active Communities • Growing older in Gloucestershire • Gloucestershire Mental Health and Wellbeing Strategy
Resource Implications	<p>The combined value of the three separate contracts is estimated to be in the region of £4.119m which is within existing budgets.</p> <p>Each contract will need to allow for government funding reductions if necessary.</p> <p>The value of the contracts may fluctuate between years and over the lifetime of the contracts. Additional investment may be added in future years in order that the Council continues to</p>

	<p>meet its statutory duties and the additional value will be reflected in the contract notice.</p> <p>There are potentially TUPE issues within the new model amongst third party providers. No Council staff will be affected. Timescales have been built into the procurement process to take account of these issues and officers will retain oversight of the mobilisation phase.</p>
<p>Sustainability checklist:</p> <p>Partnerships</p> <p>Decision Making and Involvement</p> <p>Economy and Employment</p> <p>Caring for people</p> <p>Social Value</p> <p>Built Environment</p> <p>Natural Environment' including Ecology (Biodiversity)</p> <p>Education and Information</p>	<p>Joint Commissioning Partnership Board, Gloucestershire Clinical Commissioning Group, 2gNHSFT.</p> <p>Internal senior management meetings.</p> <p>The proposed contracts will employ staff.</p> <p>The proposals will ensure vulnerable people have access to independent advocacy to secure their rights.</p> <p>Social value seeks to maximise the additional social, economic and environmental benefits to the local area by procuring goods and services above and beyond the benefits of merely the goods and services themselves. These proposals will engage volunteers.</p> <p>N/A</p> <p>N/A</p> <p>Independent advocacy can enable individuals to better understand information.</p>
<p>Tackling Climate Change</p>	<p>Carbon Emissions Implications? Positive/ Neutral/ Negative</p> <p>Vulnerable to climate change? Yes/ No/ Maybe</p>
<p>Due Regard Statement</p>	<p>Has a Due Regard Statement been completed? Yes/No</p> <p>Yes - considerations included in main body of report</p> <p>A copy of the full Due Regard Statement can be accessed on GLOSTEXT via http://glostext.gloucestershire.gov.uk/uuCoverPage.aspx?bcr=1</p>

	Alternatively a hard copy is available for inspection from Jo Moore, Democratic Services Unit, e-mail: jo.moore@gloucestershire.gov.uk .
Human rights Implications	These proposals will have a positive impact on the human rights of individuals using the services.
Consultation Arrangements	Providers Service Users Public Healthwatch Gloucestershire Commissioners GCC and Gloucestershire Clinical Commissioning Group GCC and NHS Operational staff NHS and GCC Complaints Managers Other local authorities