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| <b>Report to:</b>                  | Cabinet  | <b>Date of Meeting:</b>          | 29 <sup>th</sup> July 2021 |
| <b>Subject:</b>                    | Procurement of Advocacy Provision                  |                                  |                            |
| <b>Report of:</b>                  | Executive Director of Adult Social Care and Health | <b>Wards Affected:</b>           | All                        |
| <b>Cabinet Portfolio:</b>          | Cabinet Member – Adult Social Care                 |                                  |                            |
| <b>Is this a Key Decision:</b>     | Yes  | <b>Included in Forward Plan:</b> | Yes                        |
| <b>Exempt Confidential Report:</b> | No   |                                  |                            |

### Summary:

The purpose of this report is to recommend the procurement of an Integrated Sefton Advocacy Hub with a Lead Provider that will provide a single point of access to service users and referrers but still provide essential specialist provision to people who feel excluded from mainstream services.

### Recommendation(s):

Cabinet is recommended to:

- (1) Authorise the Executive Director of Social Care and Health to conduct a Light Touch regime open procurement exercise for an Integrated Sefton Advocacy Hub with an initial contract term of three years that will incorporate both statutory and non-statutory advocacy provision to commence from the 1<sup>st</sup> January 2022, with the option to further extend for a period of up to two years (either as a single extension or via two separate twelve-month extensions) subject to satisfactory performance of the successful supplier and the required budget being available.
- (2) Delegate decisions with regards to the procurement process, service specification and tender evaluation criteria to the Executive Director of Social Care and Health in consultation with the Cabinet Member for Adult Social Care.
- (3) Delegate the decision on the awarding of the contract and any permitted extensions thereof, beyond the initial three-year contract period, to the Executive Director of Social Care and Health in consultation with the Cabinet Member for Adult Social Care.
- (4) Delegate the decision to increase the contract value if necessary following successful award to the Executive Director of Social Care and Health in consultation with the Cabinet Member for Adult Social Care, due to the unknown impact of the implementation of the Liberty Protection Safeguards.

## **Reasons for the Recommendation(s):**

This new service model reflects the key priorities identified within the Integrated Commissioning Work Plan, which is to commission joined up Social Care and Health services with streamlined pathways that improve the service user / patient journey by providing efficient and effective service provision at place.

The commissioning of an Integrated Sefton Advocacy Hub also meets the requirements of the Care Act 2014, which states that individuals accessing advocacy services should have consistency with the advocate supporting them through their journey. It states that if an individual's needs change the advocate should be skilled to continue to support the person and not be signposted to another service where they are not known.

The new service model will underpin Sefton's Advocacy Strategy for the next 3-5 years and reflects the aims and vision of the Council's New Realities Agreement which outlines our commitment to working in partnership with the Voluntary, Community and Faith sector.

## **Alternative Options Considered and Rejected:** (including any Risk Implications)

To do nothing in terms of maintaining the current service delivery arrangements has been considered, but on the basis of being able to develop services further and achieve greater system wide efficiencies, as well as improved experiences for users of advocacy services this option is not recommended.

There are potential TUPE implications that will need to be handled sensitively and adherence to a strict procurement timeline will be required to ensure a sufficient period is available for staff consultation to take place.

Financial analysis and modelling has taken place based upon the information about the changing legislation that is currently known. However, the risk cannot be entirely eliminated, in the absence of the statutory practice guidance that is yet to be published.

## **What will it cost and how will it be financed?**

### **(A) Revenue Costs**

Revenue costs will be met from within existing Adult Social Care and Clinical Commissioning Group budgets by way of a pooled budget arrangement. The budget to be made available for advocacy provision will be £610,147 per annum. This budget may require review following the implementation of the Liberty Protection Safeguards in Spring 2022.

### **(B) Capital Costs**

There are no capital costs for the Council associated with this service.

## Implications of the Proposals:

|  |   |                        |   |                       |   |                        |   |   |   |
|--|---|------------------------|---|-----------------------|---|------------------------|---|---|---|
| <p><b>Resource Implications (Financial, IT, Staffing and Assets):</b><br/>The cost of provision is currently within the ASC and CCG baseline budget however, this may require review following the implementation of the Liberty Protection Safeguards.</p>  |   |                        |   |                       |   |                        |   |   |   |
| <p><b>Legal Implications:</b><br/><br/>Care Act 2014<br/>Mental Capacity Act<br/>Mental Health Act<br/>The Public Procurement (Amendment etc Regulations) (EU Exit) 2020 introduced to amend Public Contract Regulations 2015.</p>   |   |                        |   |                       |   |                        |   |   |   |
| <p><b>Equality Implications:</b><br/>The equality Implications have been identified and mitigated.</p>   |   |                        |   |                       |   |                        |   |   |   |
| <p><b>Climate Emergency Implications:</b><br/><br/>The recommendations within this report will</p> <table border="1"> <tr> <td>Have a positive impact</td> <td>Y</td> </tr> <tr> <td>Have a neutral impact</td> <td>N</td> </tr> <tr> <td>Have a negative impact</td> <td>N</td> </tr> <tr> <td>The Author has undertaken the Climate Emergency training for report authors</td> <td>Y</td> </tr> </table> <p>Providers will be requested to make a submission during the open procurement process regarding how their service delivery contributes towards Social Value, which includes green initiatives. The successful providers will be monitored against this as part of ongoing contract monitoring processes. The Provider will be able to develop and build upon existing ways of working to positively contribute to the Climate Change Emergency.</p> |   | Have a positive impact | Y | Have a neutral impact | N | Have a negative impact | N | The Author has undertaken the Climate Emergency training for report authors | Y |
| Have a positive impact   | Y |                        |   |                       |   |                        |   |   |   |
| Have a neutral impact  | N |                        |   |                       |   |                        |   |   |   |
| Have a negative impact   | N |                        |   |                       |   |                        |   |   |   |
| The Author has undertaken the Climate Emergency training for report authors  | Y |                        |   |                       |   |                        |   |   |   |

## Contribution to the Council's Core Purpose:

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| <p>Protect the most vulnerable: Advocacy support individuals to allow their voice to be heard and their wishes to be expressed in situations where they may be unable to do this fully by themselves.</p>                  |
| <p>Facilitate confident and resilient communities:<br/>This service will aim to empower people to become more vocal and contribute and engage in their local communities, thereby improving confidence and resilience.</p> |
| <p>Commission, broker and provide core services: The proposed approach will ensure individuals are supported to engage in the planning around their health and care needs.</p>   |
| <p>Place – leadership and influencer:</p>  |

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|---|
| Drivers of change and reform:   |
| Facilitate sustainable economic prosperity:   |
| Greater income for social investment:   |
| Cleaner Greener – Providers will be required to make a submission during the procurement process regarding how their service delivery contributes towards social value, which includes green initiatives. |

## **What consultations have taken place on the proposals and when?**

### **(A) Internal Consultations**

The Executive Director of Corporate Resources and Customer Services (FD.6458/21) and the Chief Legal and Democratic Officer (LD.4659/21) have been consulted and any comments have been incorporated into the report.

### **(B) External Consultations**

All key stakeholders have been consulted and further consultation will take place as part of the procurement process to inform and develop the service specification.

## **Implementation Date for the Decision**

Following the expiry of the “call-in” period for the Minutes of the Cabinet Meeting

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## **Appendices:**

There are no appendices to this report

## **Background Papers:**

There are no background papers available for inspection.

### **1. Introduction**

- 1.1 Within this report the term advocacy is used to describe the support given to individuals to allow their voice to be heard and their wishes to be expressed in situations where they may be unable to do this fully by themselves. Advocates and advocacy providers work in partnership with the people they support and promote social inclusion and equality.

- 1.2 Advocacy is essential for people who due to a disability, cultural difference, health condition, communication difficulty, financial circumstances or social attitudes, find themselves in a position where their ability to exercise choice or represent their own interests is limited, or where processes are particularly complex to navigate, such as social care and health pathways or where there is a safeguarding issue. Advocates play an important role in feeding back to the Council and NHS how to improve services to make them more accessible to people.
- 1.3 The Care Act 2014 places a statutory duty on Local Authorities to involve people in decisions made about them and their care and support. No matter how complex a person's needs, Local Authorities are required to help people express their wishes and feelings, support them in weighing up their options, and assist them in making their own decisions.
- 1.4 We have a statutory duty to commission the following types of Advocacy:
- Independent Mental Capacity Advocates (IMCA) under the Mental Capacity Act 2005
  - Relevant Person's Representative (RPR)
  - Independent Mental Health Advocates (IMHA) under the Mental Health Act 2007
  - Independent Health Complaints Advocacy (IHCA) under the Health & Social Care Act 2012
  - Independent Care Act Advocacy (ICAA) under the Care Act 2014
- 1.5 There is no statutory duty to provide Community Advocacy, but Sefton Council and the Sefton Clinical Commissioning Groups are committed to funding this provision as it plays an important role in supporting individuals, the health and care system and communities.
- 1.6 Sefton Council and the Sefton Clinical Commissioning Groups also commission Parent Carer Advocacy however, for the purpose of this report this provision will be excluded from the proposed future procurement process.

## **2. Background**

- 2.1 Independent Mental Capacity Advocacy (IMCA) is a statutory service for those over the age of 16, who have no close family or friends or any other person to help protect their interests under specific circumstances. Under the legislation, Local Authorities have an obligation to instruct and consult an IMCA when certain decisions are being made on behalf of people who lack capacity and who do not have any family or friends to represent them.
- 2.2 The decisions in which an IMCA must be involved (where a person is deemed to lack capacity to make the following decisions and has no close family or friends or any other person to help protect their interests) include changes of

accommodation. The Local Authority has the additional discretion to instruct an IMCA during a care act assessment or review.

- 2.3 The RPR is appointed to a person subject to a Deprivation of Liberty Safeguards (DoLS), where they do not have family or friends, or there is potential conflict of interest in a friend or family member undertaking this role.
- 2.4 Care Act Advocacy - the Care Act 2014 states that local authorities must involve people in decisions made about them and their care and support. No matter how complex a person's needs, local authorities are required to help people express their wishes and feelings, support them in weighing up their options, and assist them in making their own decisions. An independent advocate can be appointed as required 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.
- 2.5 The above services are currently provided by one organisation, namely Voiceability, procured jointly with Liverpool City Council.
- 2.6 The Independent Mental Health Act (IMHA) Advocacy service is a statutory service that was introduced in the 2007 amendments to the Mental Health Act 1983. The Health and Social Care Act 2012 updated this and placed a statutory duty on Local Authorities to commission the service.
  - IMHAs support inpatients to understand their rights, specifically:
    - Understanding of provisions of the legislation under which they qualify, and any restrictions imposed;
    - Understanding of treatment being given or proposed under the Act;
    - Understanding of rights under the Act and how to exercise those rights.
- 2.7 The IMHA service is currently provided by Together, procured jointly with Liverpool City Council.
- 2.8 The Liberty Protection Safeguards (LPS) are set to be introduced to replace the Deprivation of Liberty Safeguards (DoLS) in Spring 2022, with a period of a 1-year overlap of the two procedures to enable an effective transition.
- 2.9 The Liberty Protection Safeguards (LPS) will establish a process for authorising arrangements enabling care or treatment which give rise to a deprivation of liberty within the meaning of Article 5(1) of the European Convention on Human Rights (ECHR), where the person lacks capacity to consent to the arrangements. It also provides for safeguards to be delivered to people subject to the scheme.
- 2.10 Some of the changes that the act will introduce include: - The LPS scheme will allow for 'care arrangements' which amount to a Deprivation of Liberty to be

authorised in any setting, including educational establishments, supported living and a person's own home.

- The scheme is extended to cover 16 and 17-year olds.
- The scheme creates 'Responsible Bodies' which replace the Supervisory Body within the DOLS legislation:
  - NHS Hospitals for in-patients.
  - The CCG for all patients funded via Continuing Health Care whether in a care setting or at home.
  - The Council for everyone else, including patients in Independent Hospitals (regardless of who has placed them).

2.11 With regards to the creation of additional 'Responsible Bodies' Clinical Commissioning Groups and NHS Hospitals have the ability to delegate this responsibility to the Local Authority. However, additional resources would be required to undertake this function and an LPS Steering Group has been established within Sefton to scope and understand the requirements of the legislation in preparation for full implementation.

2.12 The above contracts have been extended until 31<sup>st</sup> December 2021 to enable a procurement process to be undertaken in conjunction with Sefton Clinical Commissioning Groups that will ensure compliance with a range of legislation, as well as successful implementation of the Liberty Protection Safeguards.

2.13 Independent Health Complaints Advocacy - An Independent Health Complaints Advocate is specially trained to help people through the NHS complaints process. It's a statutory service which means that anyone making a complaint about the NHS has a right to advocacy support. People can have help from an advocate at any point in the complaints process.

2.14 The Independent Health Complaints Advocacy is currently provided by Healthwatch Sefton.

2.15 Additionally, there are non-statutory advocacy services currently provided by Sefton Advocacy and People First which are commissioned jointly with Sefton's Clinical Commissioning Groups. They are as follows:

- General Advocacy - general advocacy provides short-term, issue-based advocacy and when required longer terms advocacy support in specifically identified circumstances. An advocate will support a person to have a strong voice when they need to make an important decision or if they are facing issues, they need help with. An advocate will:
  - Make sure the persons voice is heard
  - Help to have more choice
  - Speak on a person's behalf.
- Peer Advocacy – peer advocacy is when the advocate and the advocacy partner share similar experiences or environments. It sometimes means

that people who have experienced the same things feel they have a better understanding and can be more supportive.

- 2.16 It is therefore recommended that the above-mentioned advocacy services be procured and delivered via an Integrated Sefton Advocacy Hub which meets the requirements of the Care Act 2014, which states that individuals accessing advocacy services should have consistency with the advocate supporting them through their journey. It states that if an individual's needs change the advocate should be skilled to continue to support the person and not be signposted to another service where they are not known.
- 2.17 It is recommended that advocates be upskilled across multiple advocacy disciplines wherever possible to improve system efficiencies and experiences for users of these services as well as referring professionals.

### **3. Proposed Service Model**

- 3.1 With regards to the new service model, it is proposed that a Lead provider directly provides IMCA, ICAA, and IMHA, they could also either directly provide or sub-contract specialist community advocacy organisations to provide IHCA and specialist community-based advocacy.
- 3.2 It is expected that a strategic partnership arrangement would be the most effective model as it would retain the expert knowledge held by specialist community providers.
- 3.3 A lead provider model will provide a single point of access that takes all referrals, triages, provides support and signposts where necessary. This will provide service users with a more effective and efficient service, reducing hand offs between advocacy organisations whilst improving outcomes. The proposed service model will also provide efficiencies with regards to contract management processes.

### **4. The Procurement Process**

- 4.1 It is proposed that a Light Touch regime open procurement exercise is conducted to commission an Integrated Sefton Advocacy Hub with an initial contract term of three years that will incorporate both statutory and non-statutory advocacy provision to commence from the 1st January 2022, with the option to further extend for a period of up to two years, (either as a single extension or via two separate twelve-month extensions) subject to satisfactory performance of the successful supplier and the required budget being available.
- 4.2 The procurement will be conducted by Sefton Council on behalf of the Council and the two Sefton Clinical Commissioning Groups.
- 4.3 Updated service specifications are in the process of being formulated in consultation with relevant stakeholders and which will reflect required outcomes for Service Users.



4.4 It is envisaged that tenders will be evaluated based on a primary focus of quality and outcomes for Service Users and will be evaluated by a panel consisting of both Council and Sefton Clinical Commissioning Group Officers.

## **5. Conclusion**

5.1 The ongoing provision of advocacy services is required so that residents of Sefton continue to be supported to allow their voice to be heard and their wishes to be expressed in situations where they may be unable to do this fully by themselves.

5.2 The proposed procurement exercise will ensure that the above takes place and it represents a further commitment between Social Care and Health to provide integrated services.

5.3 Cabinet is asked to;

3.1.1. Approve the commencement of a procurement exercise for an Integrated Sefton Advocacy Hub with a contract term of three years that will incorporate both statutory and non-statutory advocacy provision to commence from the 1<sup>st</sup> January 2022;

3.1.2. Delegate decisions with regards to the procurement process, service specification and tender evaluation criteria to the Executive Director of Social Care and Health in consultation with the Cabinet Member for Adult Social Care; and

3.1.3. Delegate the decision on the awarding of the contract and any permitted extensions thereof, beyond the initial three-year contract period, to the Executive Director of Social Care and Health in consultation with the Cabinet Member for Adult Social Care

5.3.4 Delegate the decision to increase the contract value if necessary following successful award to the Executive Director of Social Care and Health in consultation with the Cabinet Member for Adult Social Care, due to the unknown impact of the implementation of the Liberty Protection Safeguards.