

Birmingham City Council

Report to Cabinet

7th September 2021



Subject: **ADVOCACY SERVICES**

Report of: **Professor Graeme Betts**
Director for Adult Social Care

Relevant Cabinet Member: **Cllr Paulette Hamilton - Health & Social Care**
Cllr Tristan Chatfield - Finance & Resources

Relevant O &S Chair(s): **Cllr Robert Pocock - Health and Social Care**
Cllr Mohammed Aikhlaq - Resources

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 009028/2021		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential:		

1 Executive Summary

- 1.1 This report provides details of the proposed Commissioning Plan for the recommissioning of Advocacy. Existing contracts for these services expire on 31st March 2022.
- 1.2 These services are statutory and vital in delivering against several Council priorities, which include corporate parenting, improved health and wellbeing and building resilient and independent communities.

- 1.3 Cabinet approval is required to proceed with the procurement of a single supplier contract for Advocacy Services via the Open route. The contract will be for a period of 5 years plus 2 years for the value of up to £9.8m commencing on 1st April 2022.

2 Recommendations

That Cabinet:

- 2.1 Approves the contents of this report to implement the strategy and the commencement of procurement activity for a single provider for Advocacy and approach, set out in this report.
- 2.2 Delegates authority to the Director for Adult Social Care in conjunction with the Interim Director of Council Management (or their delegate), the Acting City Solicitor (or their delegate) and the Assistant Director Commercialism and Development (or their delegate), and to award the contract following the procurement process up to a value of £9.8m.
- 2.3 Delegates authority to the Director of Adults Social Care, in conjunction with the Interim Director of Council Management, Acting City Solicitor and the Assistant Director of Development and Commercial (or their delegates) to extend the contract awarded for up to a period of 2 years, subject to funding availability and satisfactory performance. The contract will be awarded for 5 years with effect from 1 April 2022 and the 2 years extension will apply from 1 April 2027.
- 2.4 Authorise the Acting City Solicitor to negotiate, execute and complete any documents to give effect to the above recommendation.

3 Background

- 3.1 Advocacy is providing the support someone needs to be able to express their views, to communicate their choices and to receive services, or to participate in decision making. It can enable people to take more responsibility, have choice, and control over the decisions which affect their lives. It thereby promotes individuals' overall health and wellbeing by increasing self-determination and on a larger scale helps to promote social inclusion, equality, and justice.
- 3.2 The proposed contract is for a single service delivering the four types of advocacy services. The requirement is to offer city-wide access to services which meet individual needs and abilities and deliver community advocacy provision.
- 3.3 The cost of the service will be based on the referrals into the service that meet the statutory requirements and the preventative offer criteria. It is not possible to forecast the cost of the service. A maximum annual value of £1.4m will be applied to the contract with no minimum level set. Based on historical spend data the maximum annual value is sufficient.
- 3.4 The continued delivery of Community Advocacy (CA) provides a preventative offer to residents enabling them to maintain their wellbeing and independence. CA recognises that the health and independence of a citizen is often determined by

wider factors such as the impact of crime, welfare and benefit issues, housing, use of voluntary sector services, Neighbourhood Network Schemes, and use of universal services. The value of this element of the contract will be for a ring-fenced amount of up to £278,000 per annum.

3.5 The following legal requirements are delivered by this service:

3.5.1 **Care Act 2014 S67 (2)** requires authorities to arrange independent advocates to facilitate the involvement of a person in their assessment, preparation of their care and support plan and in the review of their care plan, if two conditions are met

- i) the person has substantial difficulty in being fully involved in these processes; and
- ii) there is no one appropriate available to support and represent the person's wishes.

3.5.2 The **Mental Capacity Act 2005 (Independent Mental Capacity Advocates IMCA)** Regulations 2006: provides a statutory framework for acting making decisions on behalf of people who lack capacity to make those decisions for themselves and provide the statutory framework within which local authorities and their partners can authorise the deprivation of liberty on an individual. Deprivation of Liberty Safeguards (DoLS) will be replaced by Liberty Protection Safeguard, in April 2022.

3.5.3 The **Mental Health Act 1983 (Independent Mental Health Advocates)** Regulations 2008: provides a framework for citizens who are adult mental health service users and qualifying adult patients in Birmingham under the Mental Health Act (1983) to be supported by an Independent Mental Health Advocate. This applies to hospital patients and those who are on a Supervised Community Treatment Orders or under guardianship.

3.5.4 Health and Social Care (Community Health and Standards) Act 2003 and the National Health Service (Complaints) Regulations 2004 (amended 2006 and 2009): puts a duty on local authorities to commission a local independent **NHS Complaints Advocacy Service (ICAS)** to provide assistance for individuals making or intending to make a complaint against the NHS (which includes a complaint to the Health Service Ombudsman).

3.6 Statutory requirements set out the minimum lawful provision of advocacy, commissioning, which extends beyond this and enables the local authority to better promote people's well-being and contributes to healthy and sustainable communities. Advocacy services will help to meet needs as we progress beyond this phase of the pandemic, for example the predicted long-term impact on people's mental health.

3.7 Community Advocacy (CA) is non-statutory advocacy service providing a preventative offer to Birmingham residents and provides advocacy support to citizens to participate and engage with services in the public, private and voluntary sector in situations not covered by specific legislation but where there is a need for an advocate.

- 3.8 The current Framework Agreement was approved by Cabinet on 13th February 2019 for the period of 2 years with the option to extend for a further 1 year. Delegated approval for the 1-year extension was obtained on 23rd October 2019. The current arrangement expires on 31st March 2022.
- 3.9 Engagement activities were regularly undertaken with Social Work Teams to ensure all relevant information regarding access to services was shared. However, this proved difficult at times as the Social Work Teams underwent a restructure, which in turn impacted referrals. It was anticipated that the second year of the contract would provide data on service delivery and cost, which would enable assessment of the cost effectiveness of the framework contract, however the second year has been impacted by the pandemic.
- 3.10 Service delivery continued throughout the Covid19 pandemic. Changes were made to service delivery in line with government guidelines to ensure citizens continued to receive statutory support. During this time the service was provided via video and phone calls, which reduced costs as there was no travel time. There has also been a reduction in referrals across all advocacy services.
- 3.11 The service will provide a single door access for advocacy services with referrals via Adults Social Workers, Hospital Teams, and self-referral. There will be a unified case management system for Birmingham.
- 3.12 There is a set annual budget of £1.4m, which is part funded by BCF contribution of £438,172 per annum. This annual budget cannot be exceeded. The services to be delivered are set out below together with service volumes:

Type of Advocacy	No. of new referrals 2019/20	No. of on-going referrals 2019/20 at the end of 4 th quarter	No. closed referrals 2019/20	No. of new referrals 2020/21	No. of on-going referrals 2020/21 at the end of 4 th quarter	No. closed referrals 2019/20
Independent Health complaints Advocacy	469	172	305	273	161	284
Independent Mental Health Capacity Advocacy, Paid Relevant Person's Representative, Out of Area PRP	1184	406	787	1082	405	1037
Independent Mental Health Advocacy	1067	97	975	991	97	991
Independent Care Act Advocacy	706	128	538	439	129	438
Community Advocacy	882	215	669	736	281	670
Total	4,308	1018	3274	3521	1073	3420

- 3.13 Cost is based on the service delivered in response to referrals made and cannot be forecast. This is managed by setting a maximum annual value.

- 3.14 Payment will be made quarterly, in arrears upon receiving an invoice for activity levels. There will be ringfenced funding for Community Advocacy which will not exceed this amount.

4 Strategic Procurement Approach

4.1 The following options were considered:

- 4.1.1 Not to tender the requirement; this is not an option as elements are a statutory requirement.
 - 4.1.2 To use a collaborative framework agreement. There are no collaborative framework agreements in place that meet the Council's requirements.
 - 4.1.3 To tender for a Birmingham only framework agreement with a single lead provider. This was considered as there is no minimum value and a framework agreement does not commit the Council to any spend. It was discounted on the basis that a single contract would be called off the framework for 5 plus 2 years for the requirements of no minimum spend and a maximum annual limit; it is more efficient to tender for the contract.
 - 4.1.4 To tender for a single provider contract for 5 years, with approval to extend for a further 2 years subject to funding availability and performance, with a value of up to £9.8m and no minimum level. This is the recommended option as it provides the most efficient means to deliver the requirements.
- 4.2 A single lead provider organisation will ensure that referrals are managed via a Single Point of Access. This allows the provider to ensure referrals are directly responded to or re-directed to the appropriate part of the supply chain and is the most efficient way to deliver for all stakeholders from referrals to contract management and keeping back office transactions to a minimum. Clarity and consistency are achieved for citizens and professionals.
- 4.3 The contract will allow the lead provider to sub-contract a proportion of the service to meet demand across the city and will ensure that the sub-contracted provider pays the Real Living Wage and meet the requirements of BBC4SR subject to financial thresholds. The lead provider will be responsible for all management of sub-contractors.
- 4.4 The proposed service delivery model is currently in place and is cited as good practice by the Social Care Institute for Excellence (SCIE).
- 4.5 The markets for this service are mainly national providers that deliver locally. There are 3 main providers giving limited but sufficient competition. The organisations are third sector of a similar size and quality provision.

5 Procurement Approach

5.1 Duration and advertising Route:

The contract will be awarded for 5 years with effect from 1 April 2022 with an option to extend by 2 years and advertised in the Find a Tender, Contracts Finder and on the www.finditinbirmingham.com website Sourcing Strategy

5.2 Procurement Route

The procurement will be via the Open Route

5.3 Scope and Specification

- 5.3.1 The service will offer a single door access to all Advocacy Services and triaged accordingly. Clients identified for the statutory service will meet the required criteria.
- 5.3.2 The Provider shall ensure a referral process is in place to capture the information required to accept the referral and provide feedback to the referring agency. Referrals will be made via the Local Authority; NHS Trust; CCG and Self-referral.
- 5.3.3 The Provider will work proactively to reduce barriers to access the service and will work flexibly, employing different engagement approaches, engaging with key stakeholders.
- 5.3.4 In order to fulfil the requirements of this service the following principles will be applied: -
 - Individuals have a single point of access to advice and assistance relating to advocacy support
 - A unified case management system detailing number of advocacy/management hours during the contract period
 - Diversity competence in service delivery
 - The provider will have expertise in local service provision to offer an appropriate response to citizens of Birmingham
 - Providers will ensure that the breadth of expertise required to deliver advocacy services will be provided either in-house or through collaboration with other expert agencies
 - All provision is designed for flexibility of support, including the use Information Technology where appropriate
 - Empathises on partnership working, including statutory, non-statutory, NNS services

5.4 Tender Structure (including evaluation and selection criteria)

- 5.4.1 There will be a single service contract
- 5.4.2 Evaluation and selection criteria

The quality / social value / price balances below were established having due regard for the corporate document 'Evaluating Tenders' which considers the complexity of the services to be provided. The tender documents will include the standard Terms and Conditions which will be reviewed and amended as required with the appropriate data sharing agreements for each service.

5.4.3 The evaluation of tenders will be assessed as detailed below:

The assessment will be divided into the following stages:

Stage 1 – Selection Stage

Stage 2 – Invitation to Tender

Stage 1 – Company Information

Criteria	Evaluation
STAGE ONE - Selection Stage	
Company Information	Pass / Fail
Financial Information (including Insurance)	Pass / Fail
Health and Safety	Pass / Fail
Compliance with Equalities	Pass / Fail
Quality Management	Pass / Fail
Grounds for Mandatory Exclusion	Pass / Fail
Grounds for Discretionary Exclusion	Pass / Fail
Supplier Portal	Pass /Fail
Modern Slavery Act 2015	Pass / Fail
Technical and Professional Ability – Advocacy Quality Performance Mark (achieved or working towards)	Pass / Fail
Safeguarding?	Pass / Fail
Declaration	Pass / Fail

The lead provider and the supply chain will be accredited with the Advocacy Quality Performance Mark, which is held by over 80 organisations offering independent advocacy services. The Advocacy Quality Performance is aligned to the National Development Team for Inclusion (NDTi) and holds a minimum pass threshold of 60% for Quality.

Tenderers will be required to pass Stage 1 to progress to Stage 2.

Stage 2 – Invitation to Tender Stage

Evaluation and Selection Criteria

Tenders will be evaluated using the quality / social value / price in accordance with a pre-determined evaluation model and the standard scoring methodology. The quality element will account for 40%, social value 20% and price 40%. This quality / social value / price balance has been established having due regard to the corporate document 'Evaluating Tenders' which considers the complexity of the services to be provided and the degree of detail contained within the contract specification.

Tenders will be evaluated against the specification in accordance with the pre-determined evaluation model described below:

Quality (40% weighting)

Criteria	Overall Weighting	Sub-weighting
Management & Organisation	100%	20%
Service Design and Delivery		30%
Safeguarding		10%
Achieving Outcomes		40%

Tenderers who score less than 60% of the quality threshold i.e. a score of 60 out of a maximum quality score of 100 (60 marks out of 100) may not proceed to the next stage of the evaluation.

Social Value (20% weighting)

Tenders will be evaluated on two social value questions, (i) tenders will be asked to evidence how positive working relationships will be built with partners in the community, including: other providers, community assets, voluntary and non-voluntary organisations, ensuring a joint up approach to providing a service to Birmingham Citizens citywide. (ii) Tenders will be asked to evidence how they plan to reduce their carbon footprint, over a course of time. Social Value rationale is attached as **Appendix 2**.

The social value questions will assess the following criteria for qualitative:

	Sub-Weighting	Sub-Criteria	Theme Sub-Weighting
Qualitative	60%	Partners in Communities	50%
		Green and Sustainable	50%
			TOTAL 100%
		BBC4SR Action plan	Total of financial

Quantitative	40%		proxies (£) score
			TOTAL 100%
Overall Social Value	20%		

Price (40% weighting):

Tenderers will be expected to submit a single hourly rate based the average rate to deliver the range of services.

Advocacy Type	Single Price Per Hour
Blended rate for statutory advocacy per hour of service delivered	
Blended rate for community advocacy per hour of service delivered	

The tenderer with the lowest acceptable price is given the maximum possible weighted price score. The other tenderers' weighted price scores will be calculated on a pro rata basis.

Overall Evaluation

The evaluation process will result in comparative quality, social value, and price scores for each tenderer. The maximum quality score will be awarded to the bid that demonstrates the highest quality. The maximum social value score will be awarded to the bid that demonstrates the highest social value. The lowest price will be given the maximum score. Other tenderers will be scored in proportion to the maximum scores to ensure value for money and the proposed contract will be awarded to the first ranked tenderer.

5.4.4 Evaluation Team

The evaluation will be undertaken by a panel made up of a minimum of 3 panel members from the following areas:

- ASC Commissioning
- ASC Social Work
- ASC Citizens Panel member

The evaluation stage will be moderated by a Procurement Officer.

5.4.5 Indicative Implementation Plan

Approval (Strategy)	September 2021
ITT Issued	October 2021
ITQ Return	December 2021
Evaluation Period	January 2022
DPR Approval (Award)	February 2022
Contract Award	March 2022
Contract Start	1 st April 2022
Mobilisation period	April 2022

6 **Service Delivery Management**

6.1 Contract Management

The contract will be managed operationally by the Senior Commissioner Adults Social Care with support from the Contract Manager. Corporate Procurement Services as required.

6.2 Performance Management

Performance will be measured through a set of key performance indicators including:

- Caseload
- Referral source
- Client demographics; and
- Client outcome and satisfaction

7 **Options considered and Recommended Proposal**

Option 1: Not to progress the procurement of this service, has been ruled out due to the statutory nature of this service.

Option 2: Deliver in-house; this is not an option as the capability does not currently exist. Due to the fluctuation in demand and the reactive timescales for delivery a lead provider with a supply chain is the most effective method.

Option 3: Procure a contract with a single provider; this is the recommended option.

8 **Consultation**

- 8.1 The Birmingham Safeguarding Adults Board has been engaged and consulted regarding the commissioning of these services.

- 8.2 Other West Midlands local authorities have been engaged in discussing their commissioning plans for advocacy and have exchanged lessons learnt and good practice.
- 8.3 Birmingham and Solihull CCG commissioners have been canvassed regarding the Independent Mental Health Advocacy service (IMCA).
- 8.4 Adults Social Care Social Justice Board have been consulted.
- 8.5 The Councils Deprivation of Liberty Safeguards (DoLS) Team has been canvassed regarding roles of paid Relevant Person's Representative and the implementation of Liberty Protection Safeguards (LPS).
- 8.6 Birmingham Children's Trust, The Rights and Participation Service have been canvassed regarding Independent Mental Health Advocacy service (IMCA) and forthcoming changes to DoLS.

9 Risk Management

- 9.1 The risk management of this commissioning is overseen by the Social Justice Board which has formal responsibility for the Commissioning of these services. The Board is chaired by the Assistant Director of Commissioning Adult Social Care.

10 Compliance Issues:

10.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 10.1.1 The recommended decisions are consistent with the Council's priorities, plans and strategies and supports the Vision and Priorities in the Council Plan 2018-2022 as agreed by Cabinet across four priority areas:

Children – an aspirational city to grow up in: We will inspire our children and young people to be ambitious and achieve their full potential.

Jobs and skills – an entrepreneurial city to learn, work and invest in: We will create opportunities for local people to develop skills and make the best of economic growth.

Health – a fulfilling city to age well in: Citizens and communities will have choice and control over their care and improved resilience and independence.

Housing – a great city to live in: We will work with our partners to build a fair and inclusive city for all.

- 10.1.2 The decision within this report will contribute and support the delivery of the following strategies:
- Vision and Strategy to Modernise Adult Social Care 2017+

- Health and Well-Being Strategy 2017+
- Homeless Prevention Strategy 2017+
- Financial Inclusion Strategy 2016+
- Domestic Abuse Prevention 2018+
- Putting Prevent First Delivering the Vision for Adults Social Care 2017+

10.2 Legal Implications

- 10.2.1 The Local Authority has a statutory obligation under the Mental Capacity Act 2005 (Independent Mental Capacity Advocates) Regulations 2006, Mental Health Act 1983 (as amended by the Mental Health Act 2007), the Health and Social Care Act 2012 and the Care Act 2014 to provide these services to vulnerable citizens 18 years or older and their carers. Section 111 Local Government Act 1972 allows the Council to do anything which is calculated to facilitate or is conducive or incidental to the discharge of its functions.
- 10.2.2 The Council has a best value duty under Section 3 of the Local Government Act 1999 to improve the efficiency, economy, and effectiveness of the services that it delivers. The use of an open procurement route/procurement of a framework agreement will ensure that the competitive bids are obtained, and the terms offered by the successful tenderer will deliver best value to the Council.
- 10.2.3 Some of the services being procured may be subject to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) however in this instance no Council employees will be affected. The Council's role will be to facilitate the transfer of relevant information between the incumbent providers of existing services and perspective bidders without providing any indemnity regarding the accuracy of information provided.
- 10.2.4 The Council's obligations for this service under the General Data Protection Regulation (GDPR) will be met by conditions in the tender specification.

10.3 Financial Implications

- 10.3.1 The maximum value of the contract is up to £9.8m.
- 10.3.2 The estimated cost of the services based on historical spend/patterns, forthcoming changes to the DoLS services and the impact of the Covid-19 pandemic in relation to mental health, is £1.4m per annum, which is funded within the existing budget in the service
- 10.3.3 The cost of undertaking this procurement will be met from the Adults Social Care budget.

10.4 Procurement Implications (if required)

10.4.1 All procurement implications are set out in this report.

10.5 Human Resources Implications (if required)

10.5.1 None identified

10.6 Public Sector Equality Duty

An Equality Assessment has been undertaken and is attached as **Appendix 1**

11 Appendices

11.1 Appendix 1 - Initial Equality Assessment

11.2 Appendix 2 - Social Value Rationale