

## **Adult and Health Committee**

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<b>Date of Meeting:</b>	27 <sup>th</sup> September 2021
<b>Report Title:</b>	Recommissioning of the Statutory Advocacy Service
<b>Report of:</b>	Nichola Thompson, Director of Commissioning
<b>Report Reference No:</b>	AH/08/21-22
<b>Ward(s) Affected:</b>	All wards

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### **1. Executive Summary**

- 1.1.** Local Authorities have a statutory requirement to provide advocacy services, to enable an individual (usually a person who is vulnerable, isolated, or disempowered) to be supported to understand and participate in decision making which affects them.
- 1.2.** These advocacy services currently include:
  - Independent Mental Capacity Advocacy (IMCA) including Deprivation of Liberty Safeguards (DoLS);
  - Paid Relevant Persons Representative (RPR) role under DoLS;
  - Independent Mental Health Advocacy (IMHA); and
  - Care Act Advocacy and Continuing Health Care Advocacy (CHC).
- 1.3.** This paper recommends that the current Statutory Advocacy Contract and Partnership Agreement with Cheshire West and Chester Council is extended and that a new service is recommissioned jointly with Cheshire West and Chester Council that will align with the new Liberty Protection Safeguard legislation when it is introduced. This will have a wider scope than current Deprivation of Liberty Safeguards (DoLS) and will apply to the following settings: care homes, NHS Hospitals, Education Facilities, Independent Hospitals, and a person's own home, noting that the revised legislation will also include younger people aged 16 to 17 years of age.
- 1.4.** The current advocacy service has been in place since 1st June 2016 as a jointly commissioned service between Cheshire West and Chester Council (as lead commissioner) and Cheshire East Council. The current

contract is due to cease on the 31<sup>st</sup> May 2022, however a further three month extension has been agreed by Cheshire West and Chester Council, and permission is being sought to extend until 31<sup>st</sup> August 2022.

**1.5.** The Statutory Advocacy Service contributes to the following priorities in the Council's Corporate Plan:

- An open and enabling organisation
- A council which empowers and cares about people.

## **2. Recommendations**

That the Adults and Health Committee:

**2.1.** Delegate authority to the Director of Commissioning in consultation with the Director of Governance and Compliance to:

**2.1.1.** Extend and, if necessary, update the current Statutory Advocacy Contract (by way of modification) and overarching Partnership Agreement with Cheshire West and Chester Council by a maximum of 15 months.

**2.1.2.** Recommission the Statutory Advocacy Service jointly with Cheshire West and Chester Council and, if beneficial to all partners, other Cheshire Clinical Commissioning Groups to align with the new Liberty Protection Safeguard legislation when it is introduced; and

**2.1.3.** Take all actions necessary to implement the above including but not limited to agreeing, procuring, awarding and executing any necessary Partnership Agreements, Memorandum of Understanding, procurement documents and Contracts together with any ancillary documents

## **3. Reasons for Recommendations**

**3.1.** Recommissioning the service will ensure that Cheshire East Council continues to meet its statutory requirements to provide appropriate advocacy locally. Moreover, the new service will take account of new Liberty Protection Safeguards legislation. The Department of Health and Social Care indicative Liberty Protection Timeline is attached as Appendix A.

**3.2.** This commission will align to the priorities outlined in the Council's Corporate Plan 2021-2025 of delivering; 'an open and enabling organisation' and a 'council which empowers and cares about people'.

**3.3.** Commissioning the service jointly with Cheshire West and Chester will ensure advocacy provision is equitable across a Cheshire-wide footprint and will offer a simpler model for stakeholders, as well as economies of scale.

- 3.4. The new specification for the service will be informed by extensive engagement work to ensure that it takes account of the needs of users and other relevant organisations such as Cheshire Clinical Commissioning Group and the Acute Trusts.
- 3.5. An extension period to the current advocacy contract is required due to the delay to the publication of the national Liberty Protection Safeguards Code of Practice.
- 3.6. Due to national legislative delays for the implementation of Liberty Protection Safeguards, for which the local authority has no control.

#### **4. Other Options Considered**

- 4.1. There are no alternatives to having the service in place because local authorities have a statutory requirement to provide an independent advocacy service.
- 4.2. Consideration was given to Cheshire East Council commissioning the service separately, but it would mean existing benefits would be lost such as reduced costs and simpler referral pathways for partners.

#### **5. Background**

- 5.1. The role of an advocate in health and social care is to support a vulnerable or disadvantaged person to have their rights upheld in a health or social care context. There are a number of different types of advocacy including:
  - Independent Mental Capacity Advocacy (IMCA) including Deprivation of Liberty Safeguards (DoLS) [to be replaced];
  - Paid Relevant Persons Representative (RPR) role under DoLS;
  - Independent Mental Health Advocacy (IMHA);
  - Care Act Advocacy
  - Continuing Healthcare (CHC)
- 5.2. The contract for the current advocacy service has been in place since June 2016 with Age UK Cheshire. This is a jointly commissioned service between Cheshire West and Chester Council as lead commissioner) and Cheshire East Council. This is due to expire on 31<sup>st</sup> May 2022. However, Cheshire West and Chester Council have requested a further extension period to this contract due to the delays in the publication of the Liberty Protection Safeguards Code of Practice and the need for the recommissioning to be informed by this.
- 5.3. Cheshire West and Chester Council are following their governance decision making processes to sign off the joint re-procurement of the Statutory Advocacy services by January 2022.

- 5.4.** The current service delivery model is based on an agreed number of core delivery hours and an hourly rate and has been renegotiated during the course of the contract term owing to a need for additional hours. Service activity is summarised in Appendix B.
- 5.5.** Due to the statutory nature of the service, steps will be undertaken to prepare for procuring a new statutory advocacy service. An agreement in principle has been reached with Cheshire West and Cheshire Council that Cheshire East Council would act as lead commissioner for this recommission. This agreement in principle will be formalised by way of a legally binding document between the parties.
- 5.6.** A comprehensive review is being undertaken to explore major aspects of service delivery. These include: the effectiveness of the current service model, options for the new service including payment method, approach in other areas and achievement of value for money. However, most importantly, it is also considering how the new statutory Liberty Protection Safeguards legislation and code of practice should be taken account of in the new commission.
- 5.7.** Liberty Protection Safeguards will replace the Deprivation of Liberty Safeguards for cases involving care homes, hospitals and will provide legal authorisation where the person lacks capacity to consent to their confinement. The code of practice was expected to be published for public consultation during Spring 2021 (this follows a delay due to the pandemic), however as at 14<sup>th</sup> September 2021 this has not happened. A summary of the eight key changes resulting from Liberty Protection Safeguards is attached as Appendix C.
- 5.8.** It is expected that implementation of Liberty Protection Safeguards will result in an overall increase in demand for statutory advocacy support across all elements of advocacy activity. This will be due to the impact of a number of factors, including for example, extending the age range to include those individuals aged 16 to 17 years, expansion of locations and settings to which Liberty Protection Safeguards will apply and the inclusion of two new Responsible Bodies (specifically the Clinical Commissioning Group and the Hospital Trust), in addition to the Local Authority.
- 5.9.** It will also mean that advocacy needs will be identified sooner. As such they will start from the beginning of the process where it is first identified that someone may be deprived of their liberty and will continue until the authorisation comes to an end. Additionally, the individual will be entitled to an 'Appropriate Person' to support them through the process to help them understand why and what is happening, and to help them be involved as much as possible.
- 5.10.** There may be a significant number of individuals who are unfriended (have no relatives), are estranged (relationship has broken down) and/or

there maybe safeguarding concerns regarding family members, in all these cases the Appropriate Person would be an advocate. As per Deprivation of Liberty Safeguards, if the person is objecting to their care and accommodation, they may require an advocate to help support them appeal using the court process.

- 5.11.** Adult Social Care have undertaken analysis to provide a best estimate of referral rates for Liberty Protection Safeguards. This found that 446 advocacy referrals would have been required if the new model had been used over the September 2020-August 2021 period, in comparison to 396 under the existing arrangements. This is a projected 13% increase in activity.
- 5.12.** Additionally, we know that there is a high percentage of people receiving care in Cheshire East who are funding the care themselves (approximately 60%) and as such are not known to the local authority. It is not yet clear as to how many of these may require an authorisation under Liberty Protection Safeguards and who may also require an advocate.
- 5.13.** Liberty Protection Safeguards and Deprivation of Liberty Safeguards will run parallel (for the local authority) for the first 12 months of implementation.
- 5.14.** To support this work, a core project board has been set up involving key stakeholders from Adult and Children social care, health, SEND, finance, legal and procurement (links will also be made with Strategic Housing and Shared Lives). Additionally, two sub-groups have been formed with a focus on mental health/learning disability and Care Act advocacy to ensure that key stakeholders are able to share their views, experiences to inform the recommission
- 5.15.** This is complemented by the Liberty Protection Safeguards Implementation Steering Group, chaired by the Head of Adult Safeguarding. This group focuses on operational practice and meets on a monthly basis, with representation from Adult Safeguarding, Adult and Children's Social Care, NHS Cheshire Clinical Commissioning Group, East Cheshire NHS Trust, Mid-Cheshire Hospital Trust, Cheshire and Wirral Partnership Trust, and Adult Commissioning and Contracting Officers. This will be a key critical friend in the development of the new service.
- 5.16.** Procurement of the service would take place using an open competitive tender exercise. This would also include questions which will be assessed relating to social value.

## **6. Consultation and Engagement**

- 6.1.** Engagement and co-production will be vital in the recommissioning process. Consequently, a draft engagement plan has been developed

informed by the statutory advocacy project board and working groups. This details: stakeholders, method of engagement and the timeline for this work. For example, market engagement will be undertaken with service providers, and consultation/engagement with service users (as lived experts) and residents. This will help to inform and shape the design of the new service. A copy of the statutory advocacy engagement overview is attached as Appendix D.

## **7. Implications**

### **7.1. Legal**

- 7.1.1.** Under Section 67 of the Care Act 2014, the local authority has a statutory duty to provide independent (statutory) advocacy for individuals who have substantial difficulty in participating in their assessment and/or in the preparation of their care and support plan or where there is an absence of “appropriate individual” to support them. This applies to individuals who are 16 years old, where applicable for Independent Mental Health Advocacy (IMHA), Independent Mental Capacity Advocacy (IMCA), Care Act Advocacy, whilst Deprivation of Liberty (DoLS) advocacy is for adults aged 18 years and over.
- 7.1.2.** The Liberty Protection Safeguards will replace Deprivation of Liberty under the Mental Capacity (Amendment) Act 2019 with the expectation that full implementation will take place in April 2022. The government has announced that some provisions covering new roles and training will come into force ahead of this date, and that a twelve week consultation on the draft regulations and Code of Practice for Liberty Protection Safeguards will be undertaken. However, it should be noted that the Code of Practice was due in the Spring of 2021, as of 14<sup>th</sup> September 2021 this has not been published.
- 7.1.3.** The use of existing Deprivation of Liberty Safeguards (Deprivation of Liberty Safeguards)/Court of Protection processes will commence from the implementation date of Liberty Protections Safeguards. Any deprivation of liberty arrangements already in place from this date will continue to apply until they are reviewed. A deprivation of liberty under Deprivation of Liberty Safeguards arrangements must be reviewed within twelve months, all existing Deprivation of Liberty Safeguards authorisations should cease or transition to Liberty Protection Safeguards within the first 12 month period. Therefore, to note that during the first year of implementation, these will run parallel.
- 7.1.4.** The recommissioning of this service will need to be compliant with the Public Contracts Regulations 2015 and the Council’s



Contract Procedure Rules. Ongoing support from Procurement and Legal will be required throughout the recommissioning process.

## **7.2. Finance**

- 7.2.1.** The Cheshire East Council base budget for the statutory advocacy service in Adults has been increased via a growth bid approved by the Medium Term Financial Strategy (MTFS) for the financial year 2021 – 2022 onwards, to address ongoing financial cost pressures as a result on increasing demand for the service. The annual budget from 2021/22 will be £300k p.a. and sits within the Peoples Commissioning Team Plan.
- 7.2.2.** The extension period for this statutory service will be funded by this budget.
- 7.2.3.** As part of the recommissioning process, cost modelling in terms of service delivery model, affordability, efficiency, and value for money will be an essential core component and will need to ensure that the future cost of the service for Cheshire East Council is within the Mid Term Financial Strategy budgeted value. There will be a robust audit trail to support the recommended delivery model with agreement with financial representatives. The recommissioned service will ensure that the current Deprivation of Liberty Safeguards, future Liberty Protection Safeguards, and dual running period advocacy needs will be able to be met by the new contract.
- 7.2.4.** Ongoing conversations are taking place with NHS Cheshire Clinical Commissioning Group seeking support for those patients who require advocacy provision from a health perspective, such as for example, Continuing Health Care, or mental health provision. There is further opportunity to explore how the statutory advocacy provision can support health to allow them to meet their new statutory responsibilities with the implementation of the Liberty Protection Safeguards.
- 7.2.5.** Work will be ongoing to quantify the financial implication of Liberty Protection Safeguards for the council including the impacts for advocacy. It is currently anticipated that additional costs linked to the implementation of the new Liberty Protection Safeguards legislation will be met from additional funding provided by central government, as this is a new burden for Local Authorities.

## **7.3. Policy**

- 7.3.1.** The provision of a statutory advocacy service in Cheshire East will ensure that Cheshire East Council is meeting its statutory

obligation. Therefore, local residents will have a voice and be supported independently to enable them to access appropriate statutory advocacy provision to meet their needs.

#### **7.4. Equality**

**7.4.1.** An initial Equality Impact Assessment has been completed.

#### **7.5. Human Resources**

**7.5.1.** It is not anticipated that additional staff resources will be needed for the re-commissioning of advocacy services.

#### **7.6. Risk Management**

**7.6.1.** A risk log be maintained by the project board throughout the re-commissioning of the service. Escalation will take place to Commissioning, Adult Social Care and Children's Management Teams where appropriate.

**7.6.2.** There have been national delays to the implementation of the Liberty Protection Safeguards. This has resulted in the implementation date moving from October 2020 to April 2022, although noting that the Liberty Protection Safeguards Code of Practice has not yet been published, and therefore may result in further delay. Any further slippage would be managed, for instance, by appropriate communication to stakeholders.

#### **7.7. Rural Communities**

**7.7.1.** All areas across Cheshire East will benefit from the statutory advocacy service delivered in the Borough.

#### **7.8. Children and Young People/Cared for Children**

**7.8.1.** It is noted that young people aged 16 to 17 years of age will feature within the revised Liberty Protection Safeguard legislation. Once the statutory code of practice is published further consideration and work will be undertaken to meet these requirements.

#### **7.9. Public Health**

**7.9.1.** Advocacy can support the mental health and wellbeing of an individual by ensuring that decisions are made in their best interest.

#### **7.10. Climate Change**

**7.10.1.** The Council has committed to becoming carbon neutral by 2025 and to encourage all businesses, residents, and organisations in Cheshire East to reduce their carbon footprint. Reflective learning from how services have been delivered during the



current pandemic and features which have reduced the carbon footprint will be incorporated into the recommissioned service.

- 7.10.2.** The procurement process is aligned to social value. This will include considering environmental impact.

<b>Access to Information</b>	
Contact Officer:	Nichola Thompson, Director of Commissioning <a href="mailto:Nichola.Thompson@cheshireeast.gov.uk">Nichola.Thompson@cheshireeast.gov.uk</a>
Appendices:	Appendix A – Liberty Protection Safeguards indicative timeline (Department of Health and Social Care) Appendix B – Summary of hours and referral type Appendix C – Liberty Protection Safeguards eight key changes Appendix D – Engagement Plan
Background Papers:	Cheshire East Corporate Plan 2021-2025 <a href="http://www.cheshireeast.gov.uk/pdf/council-and-democracy/corporate-plans/cec-corporate-plan-2021-to-2025.pdf">www.cheshireeast.gov.uk/pdf/council-and-democracy/corporate-plans/cec-corporate-plan-2021-to-2025.pdf</a>