

Adults and Health Committee

Date of Meeting:	18 January 2022
Report Title:	Recommissioning of the Statutory Advocacy Service
Report of:	Helen Charlesworth-May, Executive Director of Adults, Health and Integration
Report Reference No:	AH/37/21-22
Ward(s) Affected:	All wards

1. Purpose of the Report

- 1.1.** A report was previously submitted to the Adults and Health Committee in September 2021 that provided information on the recommissioning process for Statutory Advocacy. Further detail was requested by the committee; this report provides a comprehensive overview of the current and future service model in response to that request. The report also requests delegated authority to enter into a partnership agreement to deliver the service and to award the contract.

2. Executive Summary

- 2.1.** 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.
- 2.2.** 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).
- 2.3.** This report provides a detailed overview of the service delivery model for joint recommissioning of the Statutory Advocacy Service with Cheshire

West and Chester Council. This incorporates changes brought about by new Liberty Protection Safeguards legislation.

- 2.4.** Liberty Protection Safeguards has 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. It also includes young people aged 16 to 17 years of age.
- 2.5.** A report was previously submitted to the Adults and Health Committee in September 2021 that provided information on the recommissioning process for Statutory Advocacy. Further detail was requested by committee; this report provides a comprehensive overview of the current and future service model in response to that request.
- 2.6.** 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.

3. Recommendations

That the Adults and Health Committee:

- 3.1.** Note the new Statutory Advocacy Service model.
- 3.2.** Delegate authority to the Executive Director of Adults, Health and Integration to:
 - Enter into the partnership agreement with Cheshire West and Chester Council and Cheshire Clinical Commissioning Group (or any body that in due course may succeed to the functions of the CCG) (subject to that body's formal agreement) for the delivery of a Statutory Advocacy Service in Cheshire East and Cheshire West and Chester Council footprint.
 - Award the contract - Agree to enter a contracting arrangement with Cheshire West and Chester Council following the procurement of the Statutory Advocacy Service with the successful provider of such services.

4. Reasons for Recommendations

- 4.1.** Awarding a new advocacy contract to a provider 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.
- 4.2.** The 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'.

- 4.3. Commissioning the service jointly with Cheshire West and Chester (and potentially Health) 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.
- 4.4. The new model for the service is 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.

5. Other Options Considered

- 5.1. There are no alternatives to recommissioning the service because local authorities have a statutory requirement to provide an independent advocacy service. Not agreeing to the contract award will mean that the current contract lapses without a new service being in place to support people.
- 5.2. 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.
- 5.3. If the partnership agreement is not agreed and signed by all partners then a joint commission would not take place. This would therefore remove economies of scale and would mean a new model would have to be imposed when the current service delivery model has successfully delivered for a number of years.

6. Background

- 6.1. This report provides an overview of the key details of the current and future statutory advocacy service, as requested by Adult and Health Committee Members on 27 September 2021.
- 6.2. 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.
- 6.3. 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 cease on 31 August 2022. A new service needs to be in place from 1 September 2022.

Current Service Delivery Model

- 6.4. The current service is delivered on behalf of Cheshire East Council and Cheshire West and Chester Council and hosted by Age UK Cheshire with subcontracting arrangements in place with Disability Positive. This is an activity-based contract in which a fee is agreed upfront for the first 10,000

hours of delivery per partner, followed by which the council pays an hourly rate for hours used.

- 6.5. The Statutory Advocacy Service works to help people to say what they want, meet their rights, and represent their views.
- 6.6. There are various types of advocacy provided by the service. These include:
- 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),

A table that illustrates each type of advocacy intervention and a description is attached as Appendix 1.

- 6.7. The table below details advocacy activity for Cheshire East Council for the contracting period (12 months) 1 June 2020 to 31 May 2021.

Table 1 – Advocacy type / number of hours

Independent Mental Capacity Advocacy (IMCA)	Court of Protection including litigation Friend	Relevant Paid Representative (RPR)	Independent Mental Health Advocacy (IMHA)	Care Act	Total hours
2,584	321	4,025	973	1,694	9,597

- 6.8. Of additional note is that there are individuals who may require advocacy support who reside outside of the local area. For example, this may be due to the individual being detained under the Mental Health Act 1983.

Table 2 – out of area advocacy

Advocacy type	Number of hours
IMCA	46
RPR	548
IMHA	1
Care Act	87
Schedule 3a/1.2	27
Litigation Friend	2
Total	711

- 6.9. The current contracting arrangements are such that any staff training undertaken by either Age UK Cheshire or Disability Positive is charged to

each local authority and paid at the advocacy hourly rate. For the contract period 1 June 2020 to 31 May 2021 this equated to a total of 461 hours.

- 6.10.** The Statutory Advocacy Service provides support to those individuals with eligible advocacy support needs, the service will signpost and link with the Carers' Hub ensuring alignment for family members if additional support is required.

The Recommission

- 6.11.** In order to prepare for recommissioning advocacy, a core project board has been set up involving key stakeholders from Adult and Children's Social Care, health, special educational needs and/or disabilities (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
- 6.12.** 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.
- 6.13.** A comprehensive review has been 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, the approach in other areas and how value for money can be achieved. Most importantly, it is also considering how the new statutory Liberty Protection Safeguards legislation and the Code of Practice should be taken account of in the new commission.
- 6.14.** Engagement has been vital in informing this review. This has been undertaken jointly by Cheshire East Council and Cheshire West and Chester Council with a wide range of stakeholders (please refer to section 7).

Deprivation of Liberty Safeguards

- 6.15.** The future service delivery model will include all the statutory advocacy components as detailed above (please refer to 6.6). However, some modifications have been made due to Liberty Protection Safeguard legislation. This has been informed by current government guidance.

However, some flexibility has been planned for in the contract given that the final legislation and related code of practice has yet to be published.

- 6.16.** Liberty Protection Safeguards (LPS) will replace the Deprivation of Liberty Safeguards. These will now apply to 16 year olds and upwards (rather than those aged 18 and older). LPS will have to be authorised in advance by a 'responsible body', such as a hospital manager, Clinical Commissioning Group, and in the case of deprivations taking place in a care home or the community: the local authority.
- 6.17.** The legislation will also mean that advocacy needs will have to 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.
- 6.18.** Individuals 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. There may be a significant number of individuals who are unfriended (have no relatives), are estranged (relationship has broken down) and/or there may be 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.
- 6.19.** For a deprivation of liberty to be authorised, it needs to be clear that the person:
- Lacks the capacity to consent to care arrangements
 - The person has a mental disorder
 - Arrangements are necessary to prevent harm and are proportionate to the likelihood and seriousness of that harm.
- 6.20.** A fuller summary of the eight key changes resulting from Liberty Protection Safeguards is included in Appendix 2.
- 6.21.** The Liberty Protection Safeguards 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 5 December 2021 this has not yet happened. A letter was sent from the Chief Executive and the Director of Adult Social Care at the request of the committee to question why a new timescale has not been published.
- 6.22.** Anecdotally, the Local Government Association (LGA) and Association of Directors of Adult Social Services (ADASS) have also written to the Government for clarification as to when the Code of Practice is to be published.

- 6.23.** Liberty Protection Safeguards and Deprivation of Liberty Safeguards will run parallel (for the local authority) for the first 12 months of implementation.

Impact on Activity

- 6.24.** 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 is based on a government impact assessment which is predicting at least a 25% increase. This will be due to the impact of a number factors, including 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.
- 6.25.** 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.
- 6.26.** It is recognised that there is an ageing population, with people living for longer with multiple comorbidities, as such demand for the Statutory Advocacy Service is likely to increase. It is essential that people are supported to understand and retain information, and are able to communicate their views, wishes and feelings. The Projecting Older People Population Information (POPPI) system projects an increase across all the age ranges from 65 years and over in Cheshire East over the next 20 years. For example, there is a projected 27% increase in population growth for those aged 75-79 years and 17% population growth for those people aged 85-89 years by 2025. Therefore, further work will be undertaken in relation to future projections and associated grown bids for the service. Please see projected population table in Appendix 3.

Other Service Changes

- 6.27.** There are also some further changes that will be made to service provision informed by contract management, engagement with a range of stakeholders and required as part of the new partnership approach.
- 6.28.** There will be improved and refreshed promotion and awareness of the statutory advocacy service for professionals. This will ensure appropriateness of referral and transition from one advocacy provision to another. For example, an Independent Mental Health Advocate (IMHA) supports patients under the Mental Health Act 1983, whereas an

Independent Mental Capacity Advocate (IMCA) is specially trained to support people under the Mental Capacity Act 2005.

- 6.29.** A new performance management framework will capture the activity levels (referrals, usage, outcomes) incurred by the appropriate funding partner. Additionally, a new outcome measure will be introduced allowing us to understand the proportion of individuals who indicated that their general wellbeing has increased, decreased or stayed the same as a result of the advocacy intervention.
- 6.30.** A delegated portal will be introduced to support the council to collect online contributions from external professionals for assessments and plans. Through this portal, social workers can direct forms (or parts of forms) to external professionals from the LiquidLogic case management system. This will allow them to make their contributions to the information and provide an audit trail of their work.

Partnership Agreement

- 6.31.** An agreement was reached with Cheshire West and Chester Council that Cheshire East Council would act as lead for this recommission and would be contract holder. This agreement needs to be formalised by way of a legally binding partnership agreement.
- 6.32.** The partnership agreement sets out provisions for rights and responsibilities, for example, financial, contract/performance management, dispute resolutions. All parties will sign this prior to contract award, enabling the local authorities to work together more effectively and to manage risks.
- 6.33.** At the time of writing, Cheshire Clinical Commissioning Group have a recognised need for Continuing Healthcare Advocacy to be in place and are interested in this being delivered under this contract. However, they have not gained final approval for this to take place. As such, the agreement may also need to incorporate Health in the future.
- 6.34.** Under the Government's Health and Care Bill currently progressing through Parliament, the existing NHS Clinical Commissioning Groups (CCG) are set to be abolished and all CCG functions, assets and liabilities will transfer to their local 'Integrated Care Board' part of the 'Integrated Care System'. Therefore, any future partnership arrangements as referred to in paragraph 3.2 will need to take account of these legislative changes.
- 6.35.** During October 2021, Cheshire West and Chester Council formally approved the joint re-procurement of the Statutory Advocacy service. This approval also incorporated signing a partnership agreement.

7. Consultation and Engagement

- 7.1.** It is vital that the design of the new advocacy service is informed by engagement work with service users and professionals. This work was led by Cheshire East Council and took place from August to November 2021.
- 7.2.** It should be noted that due to the very nature and personal circumstances of the service users who use the advocacy service, a relatively low response rate was anticipated. For example, some service users lack capacity, for instance due to enduring mental health issues or a learning disability.
- 7.3.** A suite of engagement material was developed to undertake this work. This included a provider market engagement questionnaire, professionals' questionnaire and service user questionnaire (including in easy read format). The questionnaires were designed to include closed and open questions. Service user questionnaires were sent to previous users of the service with a stamped address envelope included. Drop-in meetings were also offered. Reminders were also sent to further encourage response.
- 7.4.** In addition to this, the engagement was publicised on both local authority websites as well as those of Age UK Cheshire, Disability Positive and Healthwatch Cheshire. Members of the Advocacy project group (including NHS Cheshire Clinical Commissioning Group, Cheshire and Wirral Partnership Foundation Trust (CWP), Mid Cheshire Hospital (MCHT), East Cheshire Trust) were also requested to publicise this further, as were the relevant partnership boards e.g. learning disabilities, mental health etc.
- 7.5.** Findings are detailed below in respect of provider market engagement, professional and service user engagement.
- 7.6.** The provider market engagement exercise was undertaken to gain insight and views from providers (including their level of interest in the proposed procurement exercise). This opportunity was advertised via The Chest procurement portal. Providers were asked to complete a questionnaire but could also request a meeting with representatives from both local authorities and procurement on a one-to-one basis.
- 7.7.** Eight responses were received to this, with seven providers opting to meet with representatives on a one-to-one basis. All providers stated that they had responded to the unprecedented challenges faced during the pandemic and had adapted their services to incorporate the use of digital technology (whilst acknowledging that for some service users it was not appropriate). Providers shared details of their current delivery models including in relation to volunteers and links with hospitals.

7.8. A total of 17 professionals returned a completed questionnaire. All respondents indicated that they had accessed and made referrals to the service. The number of referrals made to the service are ranked in highest percentage order as follows:

- Care Act (85.71%)
- Independent Mental Capacity Advocacy (IMHA) 78.57%
- Paid Relevant Persons Representative (RPR) 50%
- Independent Mental Health Advocacy 35.7%
- Continuing Healthcare 7.14%

7.9. These professionals stated that there was a need to ensure:

- Promotion and awareness
- That the eligibility criteria for accessing the service and promotional material were shared
- Improvements in use of digital technology for referrals and information exchanges between the service provider and referrer.

7.10. The number of services users contacted via post and response rates are detailed below for each local authority:

- Cheshire East Council – 251 service users of which 36 responses received
- Cheshire West and Chester Council 270 service users of which 15 responses were received.

7.11. Early analysis indicates that:

- Most respondents stated that they had received help filling out the questionnaire
- Respondents knew about the role of an advocate
- Respondents felt more information should be made available about the service including how to access it. It was felt this was particularly important in hospital setting and GP surgeries.

8. Implications

8.1. Legal

8.1.1. 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.

- 8.1.2.** 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 5 December 2021 this has not been published.
- 8.1.3.** The use of existing 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 12 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.
- 8.1.4.** 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.

8.2. Finance

- 8.2.1.** 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 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 People's Commissioning Team Plan.
- 8.2.2.** 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 MTFS 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.

- 8.2.3.** An initial cost modelling exercise has been undertaken by both local authorities which has provided an estimate by way of potential funding requirements for each partner. For example, this estimate was based on a 25% increase due to impact of implementation of LPS, and the percentage of referrals (based on current actual) which could be attributed to health partners.
- 8.2.4.** As this contract will be activity based the below figures are the estimates only based on the assumptions stated. Actual activity and the percentage of which are a Health responsibility may differ, and the actual hourly rate will not be known until the contract has been awarded. The below table is the estimates for Cheshire East Council costs only.

	CEC
current estimated yearly hours - in area	10,000
current estimated yearly hours - out of area	710
Total including likely increase from LPS = + 25%	13,388
Health element	32%
Council Hours - 68%	9,104
estimated hourly rate	£ 35.00
CEC cost including 25% LPS estimated increase	£ 318,623
CEC cost excluding 25% LPS estimated increase	£ 238,967

- 8.2.5.** 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.
- 8.2.6.** 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 Healthcare, or mental health provision. There is further opportunity to explore how the statutory advocacy provision can support health to allow them to

meet them to meet their statutory responsibilities with the implementation of Liberty Protection Safeguards.

8.3. Policy

- 8.3.1.** The provision of a Statutory Advocacy Service in Cheshire East will ensure that Cheshire East Council is meeting its statutory obligation. Therefore, residents will have a voice and be supported independently to enable them to access appropriate statutory advocacy provision to meet their needs.

8.4. Equality

- 8.4.1.** An Equality Impact Assessment has been completed for this recommissioning.

8.5. Human Resources

- 8.5.1.** It is not anticipated that additional staff resources will be needed for the recommissioning of advocacy services.

8.6. Risk Management

- 8.6.1.** A risk log is being maintained by the project board throughout the recommissioning work. Escalation will take place to Commissioning, Adult Social Care and Children's management teams where appropriate.
- 8.6.2.** 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. If final guidance is published in advance of procurement taking place, then the service specification will take this into account. However, if this is not the case, flexibility will be written into the contract to ensure that future service provision can take account of any changes.

8.7. Rural Communities

- 8.7.1.** All areas across Cheshire East will benefit from the statutory advocacy service delivered in the Borough. This will include an advocate travelling to meet with a service user wherever they are placed in the Borough or holding this discussion via the telephone.

8.8. Children and Young People/Cared for Children

- 8.8.1.** 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.

8.9. Public Health

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

8.10. Climate Change

- 8.10.1.** 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.
- 8.10.2.** The procurement process is aligned to social value. This will include considering environmental impact.

Access to Information	
Contact Officer:	Nichola Thompson, Director of Commissioning Nichola.Thompson@cheshireeast.gov.uk
Appendices:	Appendix 1 – Statutory Advocacy type and description Appendix 2 – Liberty Protection Safeguards eight key changes Appendix 3 – Projected Population over 65 years
Background Papers:	Cheshire East Corporate Plan 2021-2025 www.cheshireeast.gov.uk/pdf/council-and-democracy/corporate-plans/cec-corporate-plan-2021-to-2025.pdf