

Forward Plan reference number: FP/195/08/23

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| Report title: New Countywide Independent Advocacy Service | |
| Report to: Cabinet | |
| Report author: Councillor John Spence, Cabinet Member for Adult Social Care, Health and NHS Integration | |
| Date: 10 October 2023 | For: Decision |
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| County Divisions affected: All Essex | |

1. Everyone's Essex

- 1.1. Everyone's Essex sets out the strategic aim of health, wellbeing, and independence for all ages. Our ambition is that we help people to live healthy, happy and full lives with the ability to fulfil their potential irrespective of any vulnerability by being supported to actively take part in decision making and have their voices heard.
- 1.2. There will always be people who will find this difficult to do on their own. In such cases it is important that we are able to help ensure they get the support they need. Essex County Council's (ECC) advocacy service is there to provide this support. The current service commissions advocacy across all ages. At present it is due to end in June 2024. There is no provision for an extension within the current contract beyond this point.
- 1.3. The purpose of this paper is to seek agreement to go out to the market to procure a new countywide Independent Advocacy Service which will deliver both statutory and non-statutory advocacy.
- 1.4. As well as supporting the Everyone's Essex ambitions stated above, it will help level up the county by ensuring that those who struggle to get the support they need have access to someone to help on their behalf.
- 1.5 This decision will have a neutral impact on ECC's net-zero carbon ambitions.

2. Recommendations

- 2.1. Agree to undertake a competitive procurement process to procure contract for a lead provider of a countywide Independent Advocacy Service. The procurement will be a single stage tender process with a high-level evaluation of 70% quality (including 10% social value) and 30% price with a procurement ceiling price of £5.8m based on 100% of predicted demand over the 5-year

term of the contract. The contract length will be 5 years with an option to extend for a further two years.

- 2.2. Agree that the contract will be a block contract that will include 100% of overhead costs and marginal costs relating to 80% of predicted demand.
- 2.3. Agree that the Executive Director for Adult Social Care may award the contract following completion of the competitive procurement process.

3. Background and Proposal

- 3.1. Essex County Council has a statutory duty to provide an independently led Advocacy Service across adult, children, mental health and health services. This support is provided to some of the most vulnerable people in Essex.
- 3.2. Advocacy services enable individuals, usually a vulnerable child or adult, to understand and communicate their choices or express their views on issues and participate in making decisions which affect their life, care or treatment. This ensures that their rights are upheld.
- 3.3. The current advocacy service contract was issued in 2018 and was extended for one year until June 2024 in line with the original terms of the contract. This was so ECC could clarify the impacts and consequences of proposed National legislative change. These legislative changes have been postponed so ECC must now complete the procurement of a new service whilst there is still a level of uncertainty of legislative changes.
- 3.4. The current service is commissioned as an all-age and all advocacy type service and is delivered under a single contract by Rethink Mental Illness, a Registered Charity. The existing contract is made up of the following legally required services:
 - Independent Mental Capacity Advocacy (IMCA) – support whilst undergoing a mental capacity assessment, or best interest decision.
 - Paid Relevant Person Representative (RPR) – An advocate who maintains contact, represents and supports in all matters relating to the Deprivation of Liberty Safeguards (DoLS)
 - Independent Mental Health Advocacy (IMHA) – An advocate who supports an individual with mental health care and treatment issues, and understanding their rights (Mental Health Act).
 - Independent Care Act Advocacy (ICAA) – An advocate who will support people to understand their rights under the Care Act and to be fully involved in a local authority assessment, care review, care and support planning or safeguarding process.
 - Independent Health Complaints Advocacy (IHCA) – Provides support to people who want to complain about their NHS care or treatment.
 - Independent Advocacy for Children and Young People – support to an individual to express views, wishes and feelings and to make and influence decisions about their lives.

- 3.5. The contract also includes the following services which are required to be delivered to ensure the Council is meeting good practice as described within the wider Care Act and Children and Families Act requirements:
- General Advocacy
 - Peer and Citizen Advocacy
- 3.6. The original value of the current contract is £1.2m per year. The five-year contract has been extended for a further year in line with the original terms of the contract and now expires at the end of June 2024.

Potential Legislative Changes

- 3.7. Significant legislative and policy changes are likely to come, with the implementation of change under the Health and Care Act 2022, following the independent review of Children's Social Care. The final legislation and any implementations dates are still being considered by Government.
- 3.8. While the exact detail of the legislative changes is not yet clear the contract will be written so it can be adjusted if these are implemented. If additional capacity and funding are required, this will be subject to separate governance.

The Model

- 3.9. Based on the findings from the engagement sessions (see appendix 2 engagement) and benchmarking with other local authorities, the proposal is that new service will continue to deliver the same service elements listed above in 3.4 and 3.5 with the following amendments, to improve and in some cases increase current provision
- Forensic Mental Health Services¹ – The new service will include provision for providing IMHA services in Forensic settings. This provision is not included within the current contract as it was commissioned through a separate contract.
 - Providing advocacy support for parents whose children are having an assessment for, or are subject to, a Child in Need or Child Protection Plan. This provision is not included within the current contract but a need for this provision has been identified.
 - An increase in the uptake of IMHA to support our most vulnerable people who are detained or sectioned in mental health wards across Essex. This will be achieved through a greater presence of advocates within mental health settings to increase awareness and understanding of the advocacy offer.

¹ Forensic mental health services specialise in the assessment, treatment and risk management of people with a mental disorder who are currently undergoing, or have previously undergone, legal or court proceedings.

- 3.10. The model will have a lead provider which has access to other specialist advocacy providers thus maximising our opportunity to achieve good outcomes for all. This model will centralise the management of advocacy referrals, deliver a consistent triage service with clear pathways, and have flexibility to adapt to needs of the population.
- 3.11. Commissioning the service in this way will continue to ensure that it reflects the views of people with lived experience who have called for a better understanding of advocacy, greater accessibility, a more visible service and access to specialist advocates.
- 3.12. The impacts and outcomes that people of Essex will see from the new service include:
- Continuation of an equitable offer across Essex as a result of the single point of access and a countywide service. Residents will also have access to specialist advocates regardless of location or type of advocacy required through the subcontracting model
 - Some people will feel more empowered and able to self-advocate through more support and training being made available for self-advocates.
 - An increased and improved peer support offer leading to more opportunities for local and group support.
 - More access to specialist children's advocacy through a requirement to provide additional capacity in the specification.

The Procurement Approach

- 3.13. It is proposed to undertake an open single stage procurement for both statutory and non-statutory services, in compliance with the light touch regime of the Public Contracts Regulations 2015 for the procurement of a countywide Independent Advocacy Service for five years for the option to extend for another two years.
- 3.14. It is proposed that this service utilises a block arrangement, consisting of the winning providers' overheads and 80% of the predicted demand based on the tendered marginal price per hour of advocacy support delivered. Any referrals received beyond this 80% demand figure will be paid at the tendered marginal hourly rate for each additional hour of support delivered. The block approach will protect ECC from up to 20% lower levels of demand and allows ECC to flexibly deal with any demand increase.
- 3.15. In order to enable ECC to review the service and ensure that the provisions are able to meet the needs of residents, the contract will contain a break clause at the end of years 2 and 3, as well as a rolling break clause operable on six months' notice in the final two years of the contract.
- 3.16. The price / quality split is proposed to be 30% price, 70% quality of which 10% will include social value commitments made by bidders, this is to identify best value for the delivery model and achieve best possible outcomes. A ceiling price has been determined (£5.8m) and this will be set in our procurement documents to protect against any bids exceeding this and becoming unaffordable. It is expected that bids received will be in the same region in terms of price based on

the previous procurement process which was carried out in 2018 with an identical commercial model and there is more limited benefit to a larger price split than if we expected a wide array of costs.

- 3.17. Due to the risks associated with this service, a high-quality bias is required to mitigate these risks, this will require bidders to have a large number of staff with specialist qualifications, which in the current market there is a demand for. Bidders will be required to evidence that they have sufficient, good quality, qualified staff in place as this is essential for good performance delivery.
- 3.18. Due to the uncertainty surrounding the future changes in legislation it has been deemed vital that providers are able to respond and react to changes which may affect demand and cost, and this has been built in as a quality question which requires a higher weighting. The model itself will rely on providers managing a wide range of referrals for differing types of advocacy, and potentially managing other providers as a lead provider and an enhanced quality allowance is deemed important to assess this and identify the provider best placed to deliver against the model.
- 3.19. The proposed timeline will ensure the new service is ready to commence in June 2024.

Risks

- 3.20. As the new provider increases visibility of the service, the numbers of referrals may exceed the volumes set out in the contract. This will be mitigated through close monitoring of referrals and use of the peer and citizen advocacy to empower individuals or groups to speak on behalf of themselves.
- 3.21. The council has undertaken market engagement and identified that there are organisations that would be interested in bidding to deliver the service in Essex. Nonetheless, there is a risk that the procurement will be unsuccessful due to insufficient engagement from the market.
- 3.22. Although unlikely, if the procurement was unsuccessful, we would look to direct award the contract under regulation 32 of the Public Contract Regulations and follow any governance required to support this.

4. Links to our Strategic Ambitions

- 4.1. The new service aligns with Essex County Councils organisational strategy in that it:
- Helps people prosper by increasing their skills
 - Helps keep vulnerable children safer and enable them to fulfil their potential
 - Enable more vulnerable adults to live independent of social care
 - Improve the health of people in Essex County Council
- 4.2. This report links to the following aims in the Essex Vision

- Enjoy life into old age
- Provide an equal foundation for every child
- Strengthen communities through participation
- Connect us to each other and the world

4.3. Approving the recommendations in this report will have a neutral impact on the Council's ambition to be net carbon neutral by 2030.

5. Options

5.1. The Council considered a number of different options for delivery of the new service.

5.2 Option 1: Replicate the current delivery model – One provider delivering all types of advocacy across Essex

- **Benefits**

- This option is simple and familiar, offering the desired countywide single point of access
- Efficient model with economies of scale and low overheads
- Easier transition to the new service
- This would be the option that offers the lowest cost

- **Challenges**

- A single provider may not have the specialist skills to support the needs of all people who require advocacy
- Individuals may find it difficult to obtain specialist support
- Reduced resilience if the single provider is struggling with recruitment or retention of staff
- likely to offer the lowest cost but does not offer best value for money as it doesn't offer the best outcomes for all.

5.3 Option 2 - Multiple contracts delivering advocacy by geography, type or cohort – contracting with numerous different organisations to deliver specialist advocacy. Complex multi-point referral route.

- **Benefits**

- Greater choice for individuals and more locally driven
- Access to specialist advocates

- **Challenges**

- Many different referral routes could cause confusion and inefficiency.
- Difficult for individuals to navigate and self-refer
- Contingency planning should volumes change would be difficult to manage
- Would require significant ECC officer time to monitor the contract
- Not cost effective with high overheads.

5.4 Option 3 - lead provider model - delivering all types of advocacy with a single point of access and subcontracting to specialist organisations (recommended option)

- **Benefits**
 - Single point of access and access to specialist advocacy providers
 - The lead provider will be able to subcontract
 - A simple single reporting stream providing ability to monitor and respond to any difficulties in delivering good outcomes for people.
 - Enables mitigation against any future legislative changes and increases in demand.
- **Challenges**
 - Potential disruption to delivery as subcontracting arrangements are established

5.5 Option 4 – Adults’ and children and young people’s advocacy services commissioned separately.

- **Advocacy for Adults – Commissioned as described in option 3**
- **Advocacy for Childrens and young people – Commissioned with a lead specialist provider, separately delivering all types of children’s advocacy**
- **Benefits**
 - Children and Young People would have a specialist service
- **Challenges**
 - Difficult for young adults to navigate, particularly those in transition,
 - Less flexibility to mitigate increased demand
 - More costly due to two sets of overheads.

6. Issues for consideration

6.1. Financial implications

6.1.1 The Medium-Term Resource Strategy (MTRS) assumes £6.5m for advocacy services across the life of the proposed contract. The council spent £1.2m for Advocacy services in 2022/23 and are forecast to spend £1.3m for 2023/24. Based on modelled assumptions, the expected costs of the service are likely containable within the MTRS. The below table shows a range of cost estimates based on possible variations in demand.

Table 1

| £000s | Part year | | | | | Part year | |
|----------------------|-----------|-----------|-----------|-----------|-----------|-----------|------------------|
| | 2024/25 | 2025/26 | 2026/27 | 2027/28 | 2028/29 | 2029/30 | Total |
| Lower cost estimate | 731 | 1,025 | 1,086 | 1,148 | 1,213 | 307 | 5,510 |
| Higher cost estimate | 885 | 1,240 | 1,315 | 1,390 | 1,468 | 372 | 6,670 |
| MTRS | 938 | 1,276 | 1,302 | 1,328 | 1,354 | 345 | 6,544 |
| Lower variance | (207) | (252) | (215) | (180) | (142) | (38) | (1,034) |
| Higher variance | (53) | (36) | 13 | 62 | 113 | 27 | 126 |

6.1.2 The lower cost of the proposed service has been modelled on the average demand across 2021/22 and 2022/23 for the services countywide. It is anticipated that demand for all services except Independent Mental Health Advocacy (IMHA) will rise over the new contract proportionately to population growth for the cohorts of people accessing the service. More specific insight has been used to model the increase for the IMHA service.

6.1.3 There is a risk that demand for advocacy may increase above modelled assumptions and this is reflected in the higher cost estimate set out in Table 1. A sensitivity analysis has been undertaken utilising commissioning insight regarding fluctuation in demand ranging from -5% to +15%. The higher cost estimate is marginally above the current MTRS value. In the event of escalating demand leading to cost pressures, further funding and relevant governance to address this will be required. There are currently no savings proposed from this tender due to the uncertainty regarding level of demand for the service. This will be kept under review as the contract goes live in July 2024 and demand data is monitored through contract management. The contract cost and performance will be closely monitored in order to identify any pressures or savings arising.

6.1.4 The contract will be paid via a block payment and a marginal rate for additional demand as detailed in 3.14. The smaller block payment with the addition of a marginal rate provides flexibility that protects the Council from a level of demand lower than 80% of the predicted demand whilst enabling ECC to provide an effective service if demand increases. The ceiling price for the tender has been agreed at £5.8m as detailed in 3.16 and shown as part of Table 2.

Table 2

| £000s | Total contract |
|----------------------|----------------|
| Block cost | 5,002 |
| Marginal cost | 798 |
| Ceiling price | 5,800 |

6.1.5 The breakdown of funding for this contract is set out in Table 3 below. The contract is part-funded by the Local Reform and Community Voices grant received from Department for Health and Social Care (DHSC) to the value of £470,000 per annum. The value of this grant has remained static for the past three years and is expected to continue at this rate for future years. There is also a contribution of £109,000 per annum from the Memorandum of

Understanding between Essex County Council and Suffolk and North-East Essex Integrated Commissioning Board (ICB), Hertfordshire and West Essex ICB and Mid and South Essex ICB.

Table 3

| £000s | Part year | | | | | Part year | |
|----------------------|------------|--------------|--------------|--------------|--------------|------------|--------------|
| Breakdown of funding | 2024/25 | 2025/26 | 2026/27 | 2027/28 | 2028/29 | 2029/30 | Total |
| ECC | 504 | 697 | 723 | 749 | 775 | 201 | 3,649 |
| ICB MOU | 82 | 109 | 109 | 109 | 109 | 27 | 545 |
| DHSC Grant | 353 | 470 | 470 | 470 | 470 | 118 | 2,350 |
| Total | 938 | 1,276 | 1,302 | 1,328 | 1,354 | 345 | 6,544 |

6.1.6 The new contract could be subject to TUPE arrangements which would be a matter for the incumbent and new provider should the successful bidder not be the incumbent.

6.2. Legal implications

6.2.1 This proposal represents a lawful way to procure this diverse range of advocacy services, some of which we are required by law to provide and some of which are services which we are not required to provide.

6.2.2 The use of a block contract creates the risk that ECC won't use as many services as it is committed to pay for. The fact that the block is set at 80% of current usage appears to mean that this risk is unlikely to occur.

7. Equality and Diversity Considerations

- 7.1. The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
 - (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 7.3. The Equalities Comprehensive Impact Assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

8. List of Appendices

Appendix 1 Equalities Impact Assessment

Appendix 2 Feedback from engagement with people with lived experience, the market and Stakeholders

9. List of Background papers

None