

Decision Maker: Executive

For Pre-Decision Scrutiny by the Care Services PDS Committee on:

Date: 13th October 2016

Decision Type: Non-Urgent Executive Non-Key

Title: **ADVOCACY GATEWAY REVIEW**

Contact Officer: Sarah Wemborne, Commissioning Development Officer
Tel: 020 8313 4548 E-mail: sarah.wemborne@bromley.gov.uk

Chief Officer: Lorna Blackwood, Director, Health Integration Programme, Tel: 020 8313 4799, Email: lorna.blackwood@bromley.gov.uk

Ward: All

1. Reason for report

- 1.1 This report reviews the current provision of Advocacy services and recommends a future procurement strategy.
 - 1.2 The report requests approval to extend and align contracts of Advocacy services to March 2018 to facilitate the recommended procurement strategy: Advocacy services through one provider.
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1. **RECOMMENDATIONS**

2.1 **The Care Services Policy Development and Scrutiny Committee is asked to**

- i) **Support the recommendation to extend the existing Advocacy contracts to 31st March 2018 which includes Mental Health, Children's, Learning Disability and NHS Complaints Advocacy as set out in para 3.8; and,**
- ii) **Support that Commissioners undertake a procurement exercise to tender all Advocacy provision through one provider with a view to the new contract for a period of 3 years starting 1st April 2018 with the option of 1 year + 1 year extensions.**

2.2 **The Council's Executive is asked to agree:**

- i) **The extension of the existing Advocacy contracts to 31st March 2018 which includes Mental Health, Children's, Learning Disability and NHS Complaints Advocacy as set out in para 3.8; and,**
- ii) **That Commissioners undertake a procurement exercise to commission all Advocacy provision through one provider with a contract term of 3 years starting 1st April 2018 with the option of 1 year + 1 year extensions.**

Corporate Policy

1. Policy Status: Existing policy. Existing Policy Context/Statements
 2. BBB Priority: Supporting Independence.
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Financial

1. Cost of proposal: Estimated cost £308,645
 2. Ongoing costs: N/A.
 3. Budget head/performance centre: Various
 4. Total current budget for this head: ££308,645
 5. Source of funding: ECHS Core Budget
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Staff

1. Number of staff (current and additional): No Bromley Staff affected
 2. If from existing staff resources, number of staff hours: No Bromley Staff affected
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Legal

1. Legal Requirement: Statutory requirement.
 2. Call-in: Applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Estimated usage over 1100 users/beneficiaries
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A.
2. Summary of Ward Councillors comments:

3. COMMENTARY

Statutory Duties:

- 3.1 The Council is obligated to fulfil its statutory requirements in regards to Advocacy provision in line with relevant legislation:
- The Care Act 2014 (Section 67)
 - Mental Health Act 1983 (Section 2 and 3)
 - Mental Health Act 2007 (Section 30)
 - The Mental Capacity Act 2005 (Section 35)
 - The Children's Act 1989 (Section 26A)
 - The Childrens Act 2004 (Section 53)
- 3.2 The Council is obligated to fulfil its statutory duties within its procurement and contract procedures in line with the Public Procurement Regulations 2015
- 3.3 The impact of not providing Advocacy services would leave service users who are vulnerable and unable to self-advocate at a disadvantage without support to identify and apply their own rights to their daily lives. This could leave individuals at risk of potential abuse, harm or neglect. Advocacy is a necessary form of safeguarding adults and children.
- 3.4 The Council would be at risk of a breach of legal jurisdiction by not carrying out its legal duties. The consequences of which could be judicial review and potentially adverse Ombudsman review that would arise from an organisation not following their policies or procedures. The overall impact is that there would be disadvantages to service users which could result in financial penalties to the Council.

Background:

- 3.5 Advocacy provides support to improve a person's ability to express their own views and wishes or for their interests to be represented in a variety of contexts. In addition to this they help enhance individuals' social inclusion and independence through peer groups, meetings and workshops. Support is provided for people to enable them to self-advocate, meaning to be able to represent themselves.
- 3.6 There have been reductions and savings made to the amount of Advocacy support directly commissioned by the Council over recent years. However, there still remain eight active contracts with four suppliers. The total annual spend on Advocacy provision stands at £308,645. The current providers are Advocacy For All, Baker and Joy, Rethink Mental Illness and Voiceability Advocacy.
- 3.7 Historically Advocacy services have been commissioned separately for specific client groups. These arrangements have developed over time and many of the contracts have been subject to individual annual extensions and waivers. This approach has caused duplication. This could also cause disenfranchisement and confusion for service users who require more than one type of Advocacy which could affect access to services. Bromley supplies Advocacy services in the sub categories of:
- Mental Health
 - Learning Disabilities
 - General Advocacy
 - Children's Advocacy

Current Contracts:

3.8 The below Table lists the details of all active Advocacy Contracts that the Council currently commissions:

Provider	Annual Cost	Start Date of Contract and Original Contract and Extensions Taken	Client Group	Current Procurement and Expiry
Advocacy For All	£20,000	01.04.16 Original contract: 12 months no extensions available	Children's SEND (Special Educational Needs and Disability)	Procured in conjunction with wider SEN Pathfinder Waiver approved for 1-year contract to 31 March 2017. This contract is reliant on grant money to carry out particular SEND reforms. This may be approved until 2018 but will not be known until Feb/March 2017. May exist in a different contract by 2018.
Advocacy For All	£20,246	01.04.16 Original contract: 1 year no extensions available	Bromley Speaking Up-Learning Disabilities (Supported Living)	Waiver approved for 1-year contract to 31 March 2017.
Advocacy For All	£20,000	01.04.16 Original contract: 1 year no extensions available	Bromley Sparks-Learning Disabilities	Waiver approved for 1-year contract to 31 March 2017.
Advocacy For All	£21,651	01.04.15 Original contract: 2 years with option for 2 years extension-no extensions taken	Mental Health – Independent Mental Capacity Advocacy	Procured in partnership with 3 other London Boroughs Will run to 30 April 2017 – contract provides for extensions up to 2 years.
Baker and Joy	£14,063	02.02.15 Original contract: 3 years no extensions available	Children and Young People	Current contract runs until February 2018
Rethink Mental Illness	£123,000	01.04.15 Original contract: 3 years plus option for 2 years extension-no extensions taken	Mental Health	Two part contract - General Advocacy under the Care Act for MH and Independent Mental Health Advocacy Services (IMHA) Contract expires March 2018. No extension required.
Rethink	£52,000	01.10.15	Older People,	Care Act advocacy support

Mental Illness		Original contract: 3 years plus option for 2 years extension- no extensions taken	Physical and learning disability	for these client groups. Contract expires September 2018.
Voiceability Advocacy	£37,685	01.04.13 Original contract: 2 years Extensions taken: 2 years to March 2017	Adults - Independent NHS Complaints Advocacy Service	Procured through a pan London contract under an allocated grant. Contract extended to 31 March 2017. A new contract for 2017 onwards will be joined with the condition included in the framework agreement to terminate with 6 months notice. This notice will be given 6 months prior to award in April 2018.
	£308,645			
Total for proposed 3 year = 1 year + 1 year extensions	£1,543,225			

Timescale for new procurement:

- 3.9 The proposal is for current Advocacy contracts to be extended to a joint expiry of 31 March 2018 in order to allow for the procurement of a single provider for Advocacy services in time for April 2018. The indicative timescale for the new Advocacy tender subject to member approval is detailed below:

March 2017	Public Engagement
April 2017	Market Engagement
May 2017	Finalise Requirement and Documentation
June 2017	Start of Procurement
July 2017	Evaluation
September 2017	Contract Award
October 2017-March 2018	Mobilisation

4. SERVICE PROFILE / DATA ANALYSIS

- 4.1 Please refer to the Commentary section 3 and Market Considerations section 6 of this report for this profile and analysis.

5 CUSTOMER PROFILE

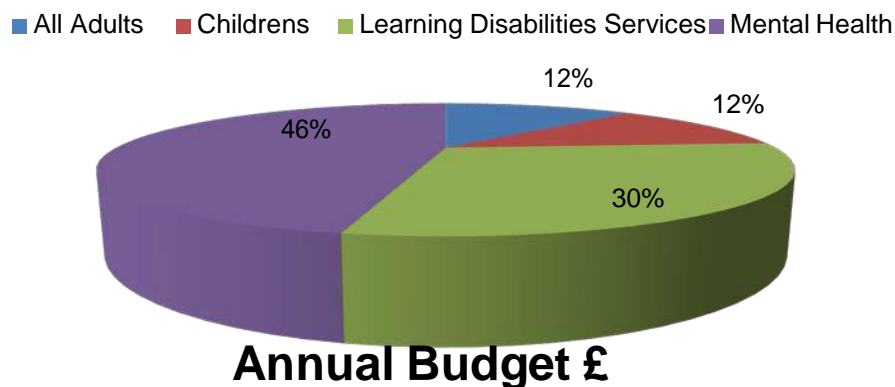
- 5.1 Monitoring reports indicate the number of people accessing Advocacy services in the Council. The figures below are indicative of the capacity and the spend with these providers as opposed to the funding following the demand.

- Advocacy For All Speaking up Group as of March of this year had a Membership of 48. Advocacy For All Sparks Group has a membership as of December of 102.
- Rethink Mental Illness Advocacy had 274 referrals
- Voiceability Advocacy had 38 referrals.
- Baker and Joy had a total of 115 referrals over the four quarters.

6. MARKET CONSIDERATIONS

6.1 Advocacy contracts deliver a number of services and for each contract there are KPI's and outcomes to be met. Statistical returns and outcomes reports are provided on a quarterly basis and this data is reviewed against the contract. Service Providers are met with formally at least annually and more frequently if there are issues to be addressed. The quarterly monitoring returns of existing contracts indicate that Advocacy services are performing their contractual requirements. Some services, such as Both the Baker & Joy (children's advocacy), have seen increasing demand that is in excess of the numbers anticipated in the specification.

6.2 The below chart displays the distribution of Third Sector Advocacy Total Annual Spend by Recipient Type



6.3 The total annual budget of Advocacy is fairly well distributed amongst target groups. However Children's Advocacy as well as General Advocacy both hold only a 12% share of the total Annual spend with Third Sector Advocacy. The distribution of funds for these historical contracts were initially not based on demand as there was no data to support such allocation. However with a single consistent provider who will have this data, experience and knowledge to allocate spend in this way to these client groups, the outlay of Third Sector Advocacy Total Annual Spend may look considerably different and will have the assurance of equal and fair distribution to service user groups.

Best Practice:

6.4 Commissioners have explored how Advocacy is commissioned and procured across a number of different councils to investigate alternative options and take a holistic approach to how Advocacy is delivered in Bromley Council.

- 6.5 The London Borough of Ealing is establishing a DPS (Dynamic Purchasing System) for its provision of Advocacy. They will cover a number of core categories including Independent Mental Capacity Advocacy, Independent Mental Health Advocacy, Domestic Violence Advocacy, Children's Advocacy and Young Carers' Advocacy.
- 6.6 Bracknell Forest Council has formed a Commissioning Advocacy strategy for 2012-2015. This strategy groups its priorities for Advocacy around the Adult Social Care Outcome Framework as enhancing quality of life, delaying and reducing the need for care and support, positive experience of care and support and protection from avoidable harm. They state a number of measures to achieve these priorities as well as means of monitoring their success, which can be incorporated into Bromley's monitoring.
- 6.7 Surrey County Council and NHS Surrey's Joint Strategy for Advocacy 2012-2016 sets out a strategy for Independent Mental Health Advocacy, Independent Mental Capacity Advocacy as well as General Mental Health, Older People, Carers, Learning Disabilities and Physical, sensory and cognitive impairment Advocacy. It illustrates how some councils are already jointly commissioning their Advocacy services with health.
- 6.8 The predominating feedback that Surrey received regarding options for Advocacy provision, pointed towards having one county wide independent Advocacy provider to arrange access to suitable Advocacy services. This would involve a lead provider which would have arrangements with expert second tier providers. As a result of their findings and consequent strategy for all forms of Advocacy, Surrey have approached the market for all Advocacy services with a few exceptions. These exceptions included Carers Advocacy as well as IMCA and IMHA services and for those using mental health recovery centres, all of which stayed with their current provision.
- 6.9 Officers have considered all options and recommend that a tender for one provider to deliver Advocacy services be implemented. The alternative option of an Advocacy Framework could entail complexities and significant resources to administer and to administrate. Furthermore it is not felt that the additional set-up costs of establishing the DPS (such as Ealing has done) and its ongoing administration in this case would provide sufficient benefits. It is expected that the single provider will be able to allocate funds to different client groups depending on complexity of need and demand. The benefit of one provider will be in the service will be greater efficiencies.
- 6.10 It is requested that the necessary steps to attaining a tender are implemented. These include the extensions that are specified in the Table 8.1 so alignment to 2018 takes place

7. STAKEHOLDER ENGAGEMENT

- 7.1 Engagement has been undertaken with several other local authorities regarding their Advocacy commissioning and provision.
- 7.2 It is also proposed to engage with existing and potential providers by holding a supplier open day to discuss service requirements and tender packaging, to ensure a full understanding of the market in Bromley.

8. SUSTAINABILITY / IMPACT ASSESSMENTS

- 8.1 Considering the financial pressures that the Council continues to face, it is important that services are sustainable at the same time as reducing pressures on contract monitoring. It is expected that one provider will reduce these pressures and attain this sustainability.

9. OUTLINE PROCUREMENT STRATEGY & CONTRACTING PROPOSALS

9.1 A number of Advocacy contracts come to their contractual end in 2017. It is proposed that these contracts are aligned to end on 31 March 2018 as detailed in the following table

Contract number	Service Title	Provider	Annual Cost	Cumulative Spend with same provider on this service	Recommendation
ecm_38930	Young Advisor Support to the SEND Pathfinder and Short Breaks Review	Advocacy For All	£20,000	£123,960	A single extension of the contract of 1 year to 31 March 2018 <i>(under CPR 23.7.3)</i>
ecm_38945	Speaking Up Advocacy Service	Advocacy For All	£20,246	£232,672	A single extension of the contract of 1 year to 31 March 2018 <i>(under CPR 23.7.3)</i>
ecm_38946	Bromley Sparks Advocacy Service	Advocacy For All	£20,000	£200,000	A single extension of the contract of 1 year to 31 March 2018 <i>(under CPR 23.7.3)</i>
ecm_3398	Independent Mental Capacity Advocacy	Advocacy For All	£21,651	£43,302	Extension of 11-months (as provided under the terms of the contract) to 31 March 2018 <i>(under CPR 23.7.3)</i>
ecm_3444	Advocacy for Children & Young People	Baker and Joy	£14,063	£44,147	A single extension of the contract of 2 months to 31 March 2018 <i>(under CPR 23.7.3)</i>
ecm_3475	General Advocacy and Independent Mental Health Advocacy Services (IMHA)	Rethink Mental Illness	£123,000	£266,760	No extension (original contract term ends 31 March 2018)
ecm_21953	Independent Advocacy Service for older people and those with a learning and/or physical disability	Rethink Mental Illness	£52,000	£133,440	Early termination of contract 31 March 2018
ecm_3361	Independent NHS Complaints Advocacy Service	Voiceability Advocacy	£37,685	£152,237	Tender via consortium from 1 April 2017 to join for 1 year. Not exemption as tender via consortium
Total			£308,645		
Total for proposed 3 year = 1 + 1 year extensions	£1,543,225				

- 9.2 From 2018 it is proposed that a single provider delivers a managed Advocacy services. This will be for a three year contract with the option of 1 year + 1 year extensions available. This will allow for a joined up, cohesive delivery through one provider that can holistically assess the relative demand for each client group and allocate spend from available funds appropriately according to this demand. The use of subcontractors will also be an option for delivery and would actively be encouraged by the Council.
- 9.3 A single provider could help improve accessibility, improving quality by eliminating the duplication expected historically to have arisen with eight contracts. On a service level, there will be a single point of access for service users and individuals will not be expected to repeat their story or be referred elsewhere.
- 9.4 It is intended that an award of this tender be finalised and shared around February 2017 and will be in line with the Councils standard procedures and arrangements as appropriate.

Outcomes:

- 9.5 Outcomes of the service will encompass all client groups with some specific to particular client groups. Outcomes will include for service users to be
- Empowered by being given a voice and to not struggle to be heard.
 - Equipped with the support they need to voice their concerns and to be able to self-advocate where possible.
 - Empowered to make informed decisions regarding the reasons they sought advocacy support for.
 - Aware of their rights to make a complaint and how to do this
- 9.6. For Advocacy services for Learning Disabilities client groups, the outcomes will encompass the following
- To increase the number of people with learning disabilities who are able to self-advocate, reducing social isolation, increasing independence as well as their ability to express their views on how they receive services and to ensure that service users are confident to remain in community services.
- 9.7. For Children's Advocacy services, outcomes will specifically state the following
- Service users voices will be heard during meetings and in any process that involves decisions about them
- 9.8. Measuring such outcomes for service users can be difficult as Advocacy is a preventative service. As part of contract monitoring Key Performance Indicators can include the number of complaints and compliments received by the service, statements and satisfaction surveys from service users as well as an analysis of trends and figures accessing the services.
- 9.9. There will be no changes in the intended service delivery. The purpose of a single provider will be for efficiencies in contract monitoring for the Council as well as the provider experiencing economies of scale with only one set of head office costs.

10. POLICY CONSIDERATIONS

- 10.1 Bromley policy stipulates the eligibility criteria for those accessing Adult Advocacy services in Bromley. Qualifying patients are those who are

- Eligible under the Care Act 2014
- experiencing a level of disability which impairs their ability to advocate on their own behalf
- experiencing complex needs and are experiencing situations which they are unable to cope with without appropriate support and/or:
- in the situation of having no known relatives or friends able to speak for them or when relatives views are in conflict with the service user views

10.2 Moreover the policy states that those accessing IMHA services will qualify through the following conditions

- detained under provisions (other than emergency provisions) of the Mental Health Act 1983 (even if they are currently on leave of absence from hospitals)
- conditionally discharged restricted patients
- subject to Guardianship under the Act or on supervised community treatment

10.3 Policy development is required as to those accessing Children's Advocacy services.

11. COMMISSIONING & PROCUREMENT CONSIDERATIONS

11.1 Please refer to Outline Procurement Strategy and Contracting Proposals Section 9.

11.2 There will be further reporting on procurement strategy in the report intended for February 2017.

12. FINANCIAL CONSIDERATIONS

12.1 Current expenditure on Advocacy type arrangements is budgeted at £309k in 2016/17. The table below shows the breakdown

SERVICE	PROVIDER	BUDGET 2016/17 £000
Young Advisor	Advocacy For All	20
Speaking Up Advocacy Service	Advocacy For All	20
Bromley Sparks Advocacy Service	Advocacy For All	20
Independent Mental Capacity Advocacy	Advocacy For All	22
Advocacy for Children & Young People	Baker and Joy	14
General Advocacy and Independent Mental Health Advocacy Services (IMHA)	Rethink Mental Illness	123
Independent Advocacy Service for older people and those with a learning and/or physical disability	Rethink Mental Illness	52
Independent NHS Complaints Advocacy Service	Voiceability Advocacy	38
		309

- 12.2 By undertaking an exercise to commission these strands of advocacy together, greater synergies may be obtained, resulting in a more efficient service delivery.
- 12.3 Any savings that may result would be offset against targets set as part of the medium term financial strategy plan of the Council.

13. PERSONNEL CONSIDERATIONS

- 13.1 No Council Staff are affected - all existing provision is outsourced to the Third

14. LEGAL CONSIDERTAIONS

- 14.1 With regards to the recommendation to extend the existing advocacy contracts, individually the value of each contract is below the EU threshold and exemption from tendering may be granted by the Executive under the Council’s Contract Procedure Rules (CPR 13). With regards to the proposal to re-tender the advocacy contract as a single contract, the value of the single contract will be above the EU threshold level applicable to these services which is currently £589,148 and as such will need to be procured in compliance with the Public Contracts Regulations 2015.

15. IMPACT ON VULNERABLE PEOPLE AND CHILDREN

- 15.1 Vulnerable members of the community such as those with learning disabilities and mental health conditions will be provided Advocacy by a holistic and cohesive service. In addition this will mean that those needing more than one type of Advocacy will have a single point of access and a better experience of engaging with such services.

Non-Applicable Sections:	None.
Background Documents: (Access via Contact Officer)	[Title of document and date]