

**DERBYSHIRE COUNTY COUNCIL**

**CABINET MEMBER**

**16 September 2015**

**Report of the Strategic Director for Adult Care**

**PROVISION OF STATUTORY INDEPENDENT MENTAL HEALTH  
ADVOCACY (IMHA)**

**ADULT SOCIAL CARE**

**1. Purpose of the Report**

To inform Cabinet Member of an Adult Care Senior Management decision to increase the funding for 2015-16 from £40,400 to £89,204 to support the continuation of the current statutory Independent Mental Health Advocacy (IMHA) service to reflect the numbers of Derbyshire residents detained under the Mental Health Act to a Derby City hospital and other budgetary reasons.

**2. Information and Analysis**

The IMHA is an independent advocate who is specially trained to work within the framework of the mental health legislation to support people to understand their rights under the Act and to participate in decisions about their care and treatment. All patients detained under the Act have the right to have access to an IMHA.

A revised Mental Health Act Code of Practice ("the Code") was published in January 2015. The Code provides new guidance as to how the IMHA service should be commissioned. Para 6.6 of the Code states,

6.6 "To ensure that IMHA services reflect the diversity of the local population and that they are as independent as possible, they are commissioned by local authorities, as follows:

6.6.1 For detained patients, by the local authority for the area in which the hospital in which they are detained is located

6.6.2 For community treatment order (CTO) patients, by the local authority for the area in which their responsible hospital is located

6.6.3 For people subject to guardianship, by the local authority which is acting as the guardian or, if the patient has a private guardian, by the local authority for the area in which the private guardian lives"

Strict adherence to this paragraph of the Code would cause some concern for the County Council as a disproportionate number of Derbyshire residents are admitted to Derby City hospitals, because of their geographical proximity to them. It is estimated that approximately 160-200 Derbyshire residents are detained in Derby City hospitals per year. Were the Code to be followed, Derby City would be responsible for the provision and funding of an IMHA for all Derbyshire residents detained in a Derby City Hospital, both whilst in hospital and following discharge if they remain subject to either a Community Treatment or Guardianship Order.

As of 1 April 2015, Derby City Council commissioned its own IMHA service. Prior to this joint arrangements with the County Council had been in place.. It has come to our attention that Derby City has procured this service based on where patients normally reside rather than the hospital where they are detained (in line with the previous version of the Code) and therefore does not take account of the revised Code recommendations for commissioning arrangements.

In addition to this, government grant funding for the IMHA service has been taken out of the Local Reform and Community Voices Grant and the same amount has now been added to the Better Care Fund (BCF) allocation, which is not ring-fenced for the provision of IMHA. The level of funding that each local authority receives for providing the IMHA service has not changed to reflect the revised Code. In any event, the amount of funding that Derby City receives for the IMHA service for their population has historically been insufficient to cover the whole cost of their required level of service for their residents, with Hardwick CCG making up the shortfall in the past two years. Officers are also aware that it has been necessary for the new Derby City provider to recruit for the all of the IMHAs required to operate the service as none of the existing staff chose to TUPE over to the new service. This has resulted in capacity issues for the Derby IMHA service leaving some Derby City residents without qualified IMHA provision in the first few months of the newly implemented service.

For the above reasons, if this Council were to wholly follow the revised Code at 6.6.1 and 6.6.2, Derbyshire residents who are detained under the Mental Health Act (1983) in a Derby City hospital, or the subject of a Community Treatment / Guardianship Order put in place by a Derby City hospital, would not receive a service from Derby City Council's commissioned statutory advocacy provider, due to contractual, capacity and funding limitations. Detained mental health patients are extremely vulnerable due to the nature of their illness and without timely access to IMHA, their recovery would be negatively impacted upon, leading to extended lengths of stay in hospital, poorer outcomes and delayed discharges from hospital.

### Proposed arrangements for Derbyshire IMHA service 2015-16

Hardwick CCG has agreed to continue to hold the IMHA contract with Derbyshire MIND, on our behalf, for a further year from 1 April 2015. A procurement exercise is in process for a new Derbyshire Statutory Advocacy service which will incorporate, IMHA, IMCA, Paid Representative and NHS Complaints Advocacy. The new service will commence from 1 April 2016.

Derbyshire MIND has adequate IMHA staffing to ensure a continued high quality statutory IMHA service for Derbyshire residents during the 2015-16 contract extension.

Whilst it is proposed not to follow the MHA Code of Practice at 6.6.1 for providing IMHA for Derbyshire residents in a Derby City hospital, it is proposed that we do follow the Code of Practice at 6.6.1 for Derbyshire residents who are placed out of county, on a reciprocal basis. Therefore, out of area patients, whether ours, or from another area, would access the statutory IMHA service provided by the LA responsible for the area in which the hospital is.

Appendix 1 shows the proposed arrangements for statutory IMHA provision from 1 April 2015.

### **3. Financial Considerations**

The out-going joint-funded service (ending 31 March 2015) has historically been delivered at a total cost of:

£ 96,837 Derby City  
£ 40,400 Derbyshire County  
**£137,237**

and is intrinsically linked with the £67,242 total grant funding that Derbyshire MIND receive for providing non-statutory mental health advocacy for Amber Valley and Erewash:

£ 19,218 Derbyshire County Council  
£ 24,012 Erewash CCG  
£ 24,012 Southern Derbyshire CCG  
**£ 67,242**

The non-statutory grant funding is off-setting the true cost of the delivery of the IMHA service. This funding is due to be reviewed, along with all other mental health VCS funding as part of the wider VCS funding review.

The amount apportioned and recharged to Derbyshire County Council by Hardwick CCG, does not accurately reflect the level of IMHA service required to meet our statutory duty to provide. This is due to the Primary Care Trust having commissioned the service until the duty to provide transferred to Local Authorities under the Health and Social Care Act 2012 and under this historical arrangement, all admissions to Derby Hospitals were counted as Derby City residents.

On analysis, admission data by 'ordinary residence' for the past three years, shows that Derbyshire has utilised on average 65% of the joint-funded service but has only funded 29.5% of the total cost of the service since 1 April 2013, accounting for a significant underspend in our allocated IMHA budget for the past two years. The current budget allocated to Adult Care for IMHA is £141,000.

The procurement of the new County Council statutory advocacy service to commence from 1 April 2016 will take into account the true costs of the IMHA service, alongside IMCA, Paid Representatives and NHS Complaints Advocacy. Meanwhile, for the forthcoming financial year, the Derbyshire County Council contribution will be increased to 65% of the total cost of the out-going joint funded service (ends 31 March 2015) to £89,204 reflecting an increase of £48,804. This increase will mitigate against the loss of the Derby City contribution of £96,837 and ensure the required level of service for Derbyshire residents who are eligible for a statutory Independent Mental Health Advocate during 2014-15. This will still leave an underspend of £51,796 in the IMHA base budget for 2015-16.

#### **4. Human Resources Considerations**

None

#### **5. Legal Considerations**

The Mental Health Act 2007 imposed a statutory duty on the Council to provide an IMHA service for all eligible people.

Legal advice has been sought from the Director of Legal Services who has advised that the Council has a discretion to deviate from the Code in the circumstances outlined in this report as there are cogent reasons for doing so.

#### **6. Other Considerations**

In preparing this report the relevance of the following factors has been considered: Legal and Human Rights, equality of opportunity, health, environmental, transport, property and crime and disorder considerations.

## **7. Background Papers**

Mental Health Act 1983

Mental Health Act Code of Practice 2015

## **8. Key Decision**

No

## **9. Is it necessary to waive the call-in period?**

No

## **10. Officer's Recommendation**

That Cabinet Member notes for information the Adult Care Senior Management decision to increase the funding for 2015-16 from £40,400 to £89,204 to support the continuation of the current statutory IMHA service for Derbyshire residents to reflect the numbers of Derbyshire residents detained under the Mental Health Act to a Derby City hospital and other budgetary reasons as set out in this report.

**Joy Hollister  
Strategic Director – Adult Care  
County Hall  
MATLOCK**

Current statutory and non-statutory IMHA arrangements for Derbyshire and Derby City residents			
Establishment	Derbyshire Resident	Derby City resident	Out of area resident
	Statutory IMHA Provider	Statutory IMHA Provider	Statutory IMHA Provider
DHcFT - Hartington Unit	Derbyshire MIND	ONE Advocacy Derby	Derbyshire MIND
DHcFT - Radbourne Unit	Derbyshire MIND	ONE Advocacy Derby	ONE Advocacy Derby
DHcFT - The Beeches	Derbyshire MIND	ONE Advocacy Derby	ONE Advocacy Derby
DHcFT - Kedleston Unit (Kingsway)	Derbyshire MIND	ONE Advocacy Derby	ONE Advocacy Derby
DHcFT - Cherry Tree (Kingsway)	Derbyshire MIND	ONE Advocacy Derby	ONE Advocacy Derby
DHcFT - Cubley Court (Kingsway)	Derbyshire MIND	ONE Advocacy Derby	ONE Advocacy Derby
DHcFT - Melbourne House	Derbyshire MIND	ONE Advocacy Derby	ONE Advocacy Derby
DHcFT - London Road	Derbyshire MIND	ONE Advocacy Derby	ONE Advocacy Derby
Cygnets Hospital	Derbyshire MIND	ONE Advocacy Derby	ONE Advocacy Derby
2-Care - Trevayler (Derby)	Derbyshire MIND	ONE Advocacy Derby	ONE Advocacy Derby
DCHS NHS Trust - Ash Green (Chesterfield)	Derbyshire MIND	ONE Advocacy Derby	Derbyshire MIND
DCHS NHS Trust - Walton Hospital (Chesterfield)	Derbyshire MIND	ONE Advocacy Derby	Derbyshire MIND
DCHS NHS Trust - Newholme Hospital (Bakewell)	Derbyshire MIND	ONE Advocacy Derby	Derbyshire MIND
Cambian Manor (Shirebrook)	Derbyshire MIND	ONE Advocacy Derby	Derbyshire MIND
Cambian Views (Matlock)	Derbyshire MIND	ONE Advocacy Derby	Derbyshire MIND
Cambian Storthfield House (South Normanton)	Derbyshire MIND	ONE Advocacy Derby	Derbyshire MIND
Cambian - The Sycamores (South Normanton)	Derbyshire MIND	ONE Advocacy Derby	Derbyshire MIND
Cambian Conifers (Borrowash)	Derbyshire MIND	ONE Advocacy Derby	Derbyshire MIND
Partnerships in Care - Hazlewood House (Heath)	Derbyshire MIND	ONE Advocacy Derby	Derbyshire MIND

<b>Pennine Care</b>	Cloverleaf Advocacy	Cloverleaf Advocacy	Cloverleaf Advocacy
<b>Other out of area placement</b>	LA in the area of hosp where person is	LA in the area of hosp where person is	LA in the area of hosp where person is
<b>Homeless person</b>	LA in the area of hosp where person is	LA in the area of hosp where person is	LA in the area of hosp where person is
<b>Community Treatment Order</b>	Derbyshire MIND	ONE Advocacy Derby	
<b>Community Treatment Order (funded by OOA LA)</b>	LA in the area of hosp where person is	LA in the area of hosp where person is	LA in the area of hosp where person is
<b>Guardianship (LA acting as guardian)</b>	Derbyshire MIND	ONE Advocacy Derby	
<b>Guardianship (Private guardian)</b>	LA in the area where private guardian lives	LA in the area where the private guardian lives	LA in the area where the private guardian lives
If a Derbyshire resident is detained within Derbyshire (including City) then as the commissioned Derbyshire provider, Derbyshire MIND will provide both statutory and non-statutory IMHA			
If a Derby City resident is detained within Derbyshire then ONE Advocacy Derby as the commissioned Derby City provider will provide both statutory and non-statutory IMHA			
If a Derbyshire or Derby City resident is placed outside of Derbyshire then the Provider commissioned by the responsible LA in that area should provide statutory IMHA under the new MHA Code of Practice 2015			
If an out of area patient or homeless patient is in a Derbyshire County hospital/unit under MHA detention, then the Derbyshire provider, Derbyshire MIND will provide statutory IMHA (if required)			
If an out of area patient or homeless patient is in a Derby City hospital/unit under MHA detention, then the Derby City provider, ONE Advocacy Derby will provide statutory IMHA (if required)			