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AGENDA ITEM: 7 (a)

DERBYSHIRE COUNTY COUNCIL

CABINET

17 JUNE 2014

REPORT OF THE STRATEGIC DIRECTOR - ADULT CARE

PROCUREMENT OF STATUTORY ADULT CARE ADVOCACY SERVICES

ADULT CARE

1. Purpose of the Report

To seek Cabinet approval for the Council to jointly procure with Derby City Council a combined contract for the provision of three statutory Adult Care Advocacy services from 1 April 2015 for a period of five years, with annual options for the Council to extend for up to three further periods of twelve months.

2. Information and Analysis

Derbyshire Adult Care is statutorily responsible for the provision of the following advocacy services. These three services are currently commissioned separately and it is proposed that joining these services together will provide more coordinated provision.

2.1 Independent Mental Health Advocacy (IMHA)

The duty to provide IMHA services under the Mental Health Act (1983) (MHA) was transferred to the County Council on 1st April 2013 with new funding of £140,000 provided within the Local Reform and Community Voices Grant (Department of Health Revenue Grant).

People who are detained under MHA (other than short term emergency sections) have a statutory right under S130 of the MHA to an Independent Mental Health Advocate (IMHA). This includes people who are subject to Guardianship or Community Treatment Orders. An IMHA is a specialist advocate who will ensure that the person's voice is heard in all aspects of their care and treatment under the Act.

The Council's existing arrangements for the IMHA Service which supported 135 people in 2013/14 are contracted through Tameside Metropolitan Borough Council (TMBC) for Glossopdale and jointly with Derby City Council via Hardwick Clinical Commissioning Group (CCG) for the rest of Derbyshire. The providers are Cloverleaf and Derbyshire MIND respectively. Hardwick CCG has agreed to continue to hold the contract on the respective Council's behalf for a further financial year until 31st March 2015. These arrangements were approved by Cabinet on 10 September 2013. See Appendix A Cabinet Report 19 September 2013 Procurement of Adult Care Services.

2.2 Independent Mental Capacity Advocacy (IMCA)

The Council and Derby City Council currently jointly purchase the Independent Mental Capacity Advocacy (IMCA) service from a consortium arrangement between Derbyshire Mind and Derbyshire Advocacy. The service purchased on behalf of the Council is for the whole of Derbyshire including the Glossopdale area and supported 226 people in 2013/14. This agreement is due to end on 31 March 2015.

The Mental Capacity Act 2005 (MCA) requires local authorities to provide the IMCA service, which evaluates whether an individual's Deprivation of Liberty (DOLS) considerations are being met. The Act provides a legal framework for the right of appeal for vulnerable people to ensure they are not deprived of their liberty unless it is in their best interests.

The MCA also requires that the Council (the decision maker) appoints paid officers to represent the person being deprived of their liberty (these are called Paid Representatives), in circumstances where no family member is able to undertake this role. This element will continue to be included alongside the IMCA service for the County and to begin to be from the start of a new contract for the City.

The recommendations of the post-legislative scrutiny report of the Mental Capacity Act by the House of Lords Select Committee have been taken into consideration in the proposed service specification for the IMCA and IMHA services.

2.2.1 Deprivation of Liberty Safeguards (DoLs) - Supreme Court Judgement on 19 March 2014

Any future service proposals will need to take account of the Deprivation of Liberty Safeguards (DoLs) - Supreme Court Judgement on 19 March 2014 regarding P v Cheshire West and Chester Council and another P and Q v Surrey County Council. The potential affect of this judgement is that individuals who reside in Registered Residential or Nursing Care and Supported Living, where they receive continuous supervision/control and thus

may not be free to leave, may be subject to the implications of this judgement. Clients identified as lacking capacity to consent to these arrangements, may thus require a DoLS authorisation and access to advocacy services as detailed in this report.

This is likely to lead to an increase in service demand which is being assessed by Adult Care officers with responsibility for commissioning this service.

See Appendix B, Department of Health Note re Supreme Court DoLS Judgment 19 03 14

2.3 NHS Independent Complaints Advocacy (NHS ICA)

Prior to the Health and Social Care Act 2012, the provision of independent advocacy for NHS complaints was a legal requirement for the Secretary of State for Health under section 248(1) of the NHS Act 2006.

The role of NHS ICA is to support any adult in their own right or on behalf of a child, family member or carer with a complaint about an NHS-funded service. It is a free, confidential and independent service designed to help people understand their rights and make informed choices. The support ranges from helping the client with initial preparation of their complaint through to attendance at resolution meetings and helping people with correspondence.

From 1 April 2013, the Health and Social Care Act 2012 transferred responsibility for delivery of an NHS ICAS to local authorities. The current contract was commissioned through a regional arrangement in the East Midlands with the current contract being held by POhWER and ending on 31 March 2015. The service purchased for the Council is for the whole of Derbyshire including the Glossopdale area and supported 161 people in 2013/14.

2.4 Proposed Joint Commissioning Arrangement

Arrangements for the current contracts end on 31 March 2015 and after consideration by the Council's and Derby City Council's commissioners, it is proposed to jointly offer a single contract for the IMHA, IMCA and NHS ICA services from 1 April 2015, in order to offer an integrated service. The service will cover the whole county including Glossopdale and Derby City. The successful service provider will be performance managed to ensure that the provision of the three services matches the funding commitment of each of the funding Councils.

It is expected that there will be a reduction in the Council's back office function by combining the three contracts.

3. Financial Considerations

All the proposed expenditure outlined in this report will be met from the base budget allocated to the current three schemes. The procurement exercise referenced in this report will ensure more efficient ways of operating and reduce the current budget commitment.

At present, each of the organisations has its own referral arrangements for people to access their specific service and their own administrative, finance, human resource and accommodation costs. It is considered that the combined delivery of these functions through a single contract will result in a reduced budget requirement for the current level of activity. It is predicted that the efficiencies against current activity could be as high as a 28% reduction equivalent to a contract value of £400K.

The efficiencies proposed by procuring a combined advocacy service will mean that there will be sufficient funding available to meet the expected increase in service required through authorising of DoLs to meet the Supreme Court Judgement referred to in paragraph 2.2.1. It is proposed that the procurement arrangements will require providers to tender for a core service against present demand with additional volume to be purchased as needed.

Available base budget per individual service for the Council are shown below -

Service	£
IMHA	140,000
IMCA	198,689
NHS ICA	219,500
Total	£558,189

Derby City Council's funding contribution is in addition to the above amount to meet their required service level requirements.

4. Human Resource Considerations

All the current services are provided by community and voluntary organisations and none of the staff involved are employed by the County Council. However, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply to staff of these community and voluntary organisations if there is a transfer of service provision as a result of the procurement exercise.

5. Legal Considerations

As set out in the report.

6. Equal Opportunity Considerations

In developing the service specification and determining the level of service required, the commissioners have carried out a needs analysis in relation to age, gender, ethnicity, and accessibility of the service in relation to a variety of accommodation settings.

7. Other Considerations

In preparing this report the relevance of the following factors has been considered: - prevention of crime and disorder, environmental, health, and property considerations.

8. Key Decision

No

9. Call-in

Is it required that call-in be waived in respect of the decisions proposed in the report? No

10. OFFICER'S RECOMMENDATIONS

- 10.1 That Cabinet approves the proposed procurement arrangements of three statutory Adult Care Advocacy services from 1 April 2015 for a period of five years, with annual options for the Council to extend for up to three further periods of twelve months; and
- 10.2 That a further report to Cabinet will be submitted to seek approval for the award of a contract when the procurement process is complete.

MARY MCELVANEY
Acting Strategic Director – Adult Care
County Hall
MATLOCK

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Agenda Item 11B

NOT FOR PUBLICATION
Contains information relating
to the financial or business
affairs of any particular person
(including the Authority holding
the information)

DERBYSHIRE COUNTY COUNCIL**CABINET****10th SEPTEMBER 2013****REPORT OF THE STRATEGIC DIRECTOR - ADULT CARE****PROCUREMENT OF ADULT CARE SERVICES****1. Purpose of the Report**

To seek Cabinet approval:

- For the procurement arrangement of three specific Adult Care services during 2013-2014.
- To waive Standing Orders in Relation to Contracts in order to extend the current contracts for provision of Home Improvement Agencies by 3 months.

2. Information and Analysis

The County Council currently contracts with Chesterfield Borough Council and Metropolitan Care and Support for the provision of Home Improvement Agencies. The County Council also contracts with Derbyshire MIND for the provision of an Independent Mental Health Advocacy Service, and with Nottingham Community Housing Association (NCHA) for the provision of a housing related support service for people with a learning disability. These agreements are due to end on or before 31st May 2014. Cabinet approval is sought to undertake competitive procurement exercises during 2013-2014 to ensure these valued services continue to be available in Derbyshire.

The aim of each procurement exercise will be to improve service outcomes whilst achieving value for money. Details of the services concerned are as follows:

- 2.1 Home Improvement Agency (HIA)** – this housing related service assists vulnerable homeowners and private sector tenants who are older, disabled or on a low income, to repair, improve, maintain or adapt their homes. The aim is to enable vulnerable people to maintain their independence, health and wellbeing in their own home for as long as

possible. The two existing HIA's in Derbyshire are Metropolitan Care and Support and Chesterfield Borough Council, which cover all of Derbyshire excluding Bolsover and North East Derbyshire Districts. Both work alongside other agencies such as housing, health and social care to deliver a service. An engagement exercise recently took place with the District and Borough Councils as they are key stakeholders and referrers into the HIA. This confirmed that the service should retain the same remit but should also focus on ensuring appropriate assistance for people with dementia is available.

It is proposed that the service to be procured will be Countywide rather than two separate services which currently operate. It was agreed by stakeholders that this unified contract will offer improved consistency of service provision, better coverage across the County (Bolsover and North East Derbyshire Districts will engage with the newly procured service and appropriately refer clients for assistance), and improved value for money. The Derbyshire service was benchmarked against similar provision in comparator regions and as a result the number of clients to be supported has been increased by 12% against previous performance. Cabinet approved an extension to the existing contracts on 22 January 2013 for a 9 month period which takes these services up to 4 January 2014, and noted that the service would be procured openly and competitively in 2013/14.

In order to conduct a procurement exercise, an extension to existing contracts is required for a further 3 month period. Such an extension would require the Council to waive Standing Orders in relation to contracts. The new contract would then commence on 1 April 2014. The annual contract value is set at £208,138 (a 10% reduction from a previous budget of £231,264 as a result of efficiencies from management costs due to procuring one service). The successful tenderer will be awarded an initial one year contract, with the option to extend for a further period of up to three years, subject to annual review, strategic relevance and the availability of continued funding.

- 2.2 Independent Mental Health Advocacy (IMHA Statutory)** - The duty to provide IMHA services under the Mental Health Act (1983) was transferred to the County Council on 1st April 2013 with new funding of £140,000 provided within the Local Reform and Community Voices (Department of Health Revenue Grant).

People who are detained under The Mental Health Act (other than short term emergency sections) now have a statutory right to an Independent Mental Health Advocate (IMHA). This includes people who are subject to Guardianship or Community Treatment Orders (CTO's). An IMHA is a

specialist advocate who will ensure that the person's voice is heard in all issues around their care and treatment under the Act.

The Independent Mental Health advocate will:

- represent the person's views as if they were their own;
- protect their rights and entitlements to services;
- help people to make their own decisions and choices;
- ensure that the person has the opportunity to participate in decisions made about them and more importantly, ensure that they remain central to any and all decisions;
- signpost people to other agencies with relevant expertise, where appropriate.

The Council's existing arrangements for the IMHA (Independent Mental Health Advocacy) Service are contracted through Tameside Metropolitan Borough Council (TMBC) for Glossopdale and jointly with Derby City Council via Hardwick Clinical Commissioning Group (CCG) for the rest of Derbyshire. The providers are Cloverleaf and Derbyshire MIND respectively. Hardwick CCG have agreed to continue to hold the contract on the respective Council's behalf for a further financial year until 31st March 2015.

The Council and Derby City Council jointly purchase from Derbyshire Mind a complementary Independent Mental Capacity Advocacy (IMCA) service. This contract is due to end 31st March 2014 with an option to extend for a further financial year to 31st March 2015.

The Independent Mental Capacity Advocate helps people who:

- do not have mental capacity
- have not given power of attorney to anyone
- do not have a court appointed deputy
- have no friends to speak on their behalf

It is proposed to consider the option of offering a single contract for both the IMHA and IMCA service, commissioned jointly with Derby City Council from 1 April 2015. If this proposal is agreed, commissioning officers from both Council's will develop a joint specification and procurement timetable to offer a single contract to tender, for the IMHA and IMCA services from 1 April 2015.

In relation to Glossopdale, consideration will also be given to linking with Tameside Metropolitan Borough Council for both the IMHA and IMCA services. Discussions will be undertaken with the relevant TMBC officers to investigate the feasibility of such an arrangement.

If a jointly commissioned service is agreed it will be likely to provide efficiency savings for all local authorities concerned, through the service(s) having shared infrastructure costs.

It is therefore proposed to extend the existing funding arrangements for the Derbyshire IMHA and to take up the option to extend the current IMCA contract to 31st March 2015 this will then allow us to determine the best way forward for the provision of these statutory mental health services.

2.3 Floating Housing Related Support Service for People with a Learning Disability

The service provides people with a learning disability in Derbyshire with support to secure and maintain independent living. This can include the provision of housing advice, support with understanding tenancy agreements, and maximising independent living skills by, for example, delivering budgeting advice, support to access training and employment, or better management of physical and mental health. The current contract allows support to take place for up to 2 years, after which time if there are long term needs then referral to statutory agencies would take place. A review has been undertaken alongside Community Lives engagement to establish whether changes need to be made to these services; clients and carers have told us that the service needs expanding as demand exceeds current contracted unit numbers; also there should be a long term low level option in this service for people who do not meet Fair Access to Care Services criteria, but who do need some ongoing housing related support beyond 2 years. Additionally the housing options element of the current contract which provides support to Social Work teams in finding supported living or other accommodation for clients will not be procured as part of this contract, but will be provided in an alternative way. The current contract value is £296,081 for the floating support. It is proposed to award the successful tenderer an initial two year contract with the option to extend for a further period of up to three years, subject to annual review and the availability of continued funding.

3. Financial Considerations

All the proposed expenditure outlined in this report can be met from the appropriate Adult Care budgets. The procurement exercises referenced in this report will be undertaken to ensure that more efficient ways of operating will be promoted to reduce the current budget commitment.

4. Human Resource Considerations

As all the above are community and voluntary organisations none of the staff involved are employed by the County Council. However, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply to staff of those community and voluntary organisations if there is a transfer of service provision as a result of a procurement exercise.

5. Legal Considerations

For services to children or vulnerable adults, approval of any contract is conditional on the existence within these organisations of appropriate statutory procedures assessing suitability to work with children or vulnerable adults.

With regards to the request to waive standing orders in respect of the HIA Service, the Council's Standing Orders permit Cabinet or a Cabinet Member to waive the requirement to seek competitive tenders for proposed contracts where it is satisfied that there are such special circumstances. The Director of Legal Services has advised that it is justifiable to waive Standing Orders in Relation to Contracts in order to extend this contract for three months given the need for continuity of service, the relatively short extension period being sought, and the re-procurement timetable set out in this report.

6. Equal Opportunity Considerations

The need for undertaking an equality impact assessment will be considered for each of the services detailed in this report as part of the commissioning/re-procurement process.

7. Other Considerations

In preparing this report the relevance of the following factors has been considered: - prevention of crime and disorder, environmental, health, and property considerations.

8. Key Decision

Yes

9. OFFICER'S RECOMMENDATIONS

That Cabinet approves:

- The procurement during 2013 – 2014 of a home improvement agency, and floating housing related support service for people with a learning

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disability.

- A one year extension of the current arrangements with Hardwick CCG for Independent Mental Health Advocacy Service.
- The waiving of Standing Orders in Relation to Contracts by 3 months from 4th January 2014 to enable the new contract for the Home Improvement Agency to commence on 1st April 2014.

**BILL ROBERTSON Strategic
Director – Adult Care**

**County Hall
MATLOCK**



Department
of Health

28th March 2014

DEPRIVATION OF LIBERTY SAFEGUARDS (DoLS)

Judgment of the Supreme Court
P v Cheshire West and Chester Council and another
P and Q v Surrey County Council

The contents of this note are specifically addressed to all those who are

- involved in the assessment and/or authorisation of a deprivation of liberty
- involved in the care of individuals who may lack capacity
- responsible for policies and procedures relating to the care of individuals who may lack capacity.

Mental Capacity Act (MCA) and Deprivation of Liberty Safeguard (DoLS) leads should ensure this note is cascaded to all relevant staff.

Background

On 19 March 2014, the Supreme Court handed down its judgment in the case of “P v Cheshire West and Chester Council and another” and “P and Q v Surrey County Council”. The full judgment can be found on the Supreme Court’s website at the following link:

http://supremecourt.uk/decided-cases/docs/UKSC_2012_0068_Judgment.pdf

The accompanying press release with a short description of the cases under consideration can be found at the following link:

http://supremecourt.uk/decided-cases/docs/UKSC_2012_0068_PressSummary.pdf

The judgment is significant in the determination of whether arrangements made for the care and/or treatment of an individual lacking capacity to consent to those arrangements amount to a deprivation of liberty.

A deprivation of liberty for such a person must be authorised in accordance with one of the following legal regimes: a deprivation of liberty authorisation or Court of Protection order under

the Deprivation of Liberty Safeguards (DoLS) in the Mental Capacity Act 2005, or (if applicable) under the Mental Health Act 1983.

Key points from the Supreme Court judgment

Revised test for deprivation of liberty

The Supreme Court has clarified that there is a deprivation of liberty for the purposes of Article 5 of the European Convention on Human Rights in the following circumstances:

The person is under continuous supervision and control and is not free to leave, and the person lacks capacity to consent to these arrangements.

The Supreme Court held that factors which are NOT relevant to determining whether there is a deprivation of liberty include the person's compliance or lack of objection and the reason or purpose behind a particular placement¹. It was also held that the relative normality of the placement, given the person's needs, was not relevant. This means that the person should not be compared with anyone else in determining whether there is a deprivation of liberty. However, young persons aged 16 or 17 should be compared to persons of a similar age and maturity without disabilities.

Deprivation of liberty in "domestic" settings

The Supreme Court has held that a deprivation of liberty can occur in domestic settings where the State is responsible for imposing such arrangements. This will include a placement in a supported living arrangement in the community. Hence, where there is, or is likely to be, a deprivation of liberty in such placements that must be authorised by the Court of Protection.

Suggested actions

Relevant staff should

- Familiarise themselves with the provisions of the Mental Capacity Act, in particular the five principles and specifically the "least restrictive" principle.
- When designing and implementing new care and treatment plans for individuals lacking capacity, be alert to any restrictions and restraint which may be of a degree or intensity that mean an individual is being, or is likely to be, deprived of their liberty (following the revised test supplied by the Supreme Court)

¹ NB. These factors (compliance/ objection and the reason or purpose for the placement) are of course still relevant to assessment of best interests and consideration of Article 8 rights.]

- Take steps to review existing care and treatment plans for individuals lacking capacity to determine if there is a deprivation of liberty (following the revised test supplied by the Supreme Court)
- Where a potential deprivation of liberty is identified, a full exploration of the alternative ways of providing the care and/ or treatment should be undertaken, in order to identify any less restrictive ways of providing that care which will avoid a deprivation of liberty
- Where the care/ treatment plan for an individual lacking capacity will unavoidably result in a deprivation of liberty judged to be in that person's best interests, this MUST be authorised.

Local authorities should in addition

- Review their allocation of resources in light of the revised test given by the Supreme Court to ensure they meet their legal responsibilities.

Although local authorities are the supervisory body for DoLS for both care home and hospital settings, the NHS (commissioners and providers) have a vital role to play in correctly implementing DoLS (and the wider MCA). We expect that the NHS and local authorities will continue to work closely together on this.

Authorising a deprivation of liberty

The DoLS process for obtaining a standard authorisation or urgent authorisation can be used where individuals lacking capacity are deprived of their liberty in a hospital or care home.

The Court of Protection can also make an order authorising a deprivation of liberty; this is the only route available for authorising deprivation of liberty in domestic settings such as supported living arrangements. This route is also available for complex cases in hospital and/ or care home settings.

Individuals may also be deprived of their liberty under the Mental Health Act if the requirements for detention under that Act are met.

Further information

In the first instance professionals should contact their organisation's MCA-DoLS lead for further information.

In the meantime the Government is preparing its response to the House of Lords Select Committee report into the MCA and DoLS. We expect to issue this response by the summer. The attached annex provides some additional background.]

Annex – Further background and steps for consideration

It is difficult to predict the number of individuals who lack capacity whose arrangements should be assessed in light of the Supreme Court judgment and the number of additional individuals for whom deprivation of liberty will need to be authorised.

Local authorities submit information on the number of assessments undertaken for deprivation of liberty authorisations under the Mental Capacity Act 2005 and the number of authorisations approved to the Health and Social Care Information Centre. The Department of Health and the Care Quality Commission will explore how best to monitor the evolving situation to assist in determining the practical impact of the Supreme Court's revised test.

Professionals must remember that the deprivation of liberty authorisations and Court of Protection orders under the Deprivation of Liberty Safeguards (DoLS) in the Mental Capacity Act 2005 are rooted in the principles of that Act. DoLS exist to provide protection to individuals – to safeguard these individuals when a deprivation of liberty is an unavoidable part of a best interests care plan. Individuals who are identified as potentially deprived of their liberty must be considered on a case-by-case basis and all appropriate steps taken to remove the risk of a deprivation of liberty where possible. The emphasis should be on empowerment and enablement.

Further steps that Local Authorities could consider taking are:

- Ensuring awareness of the Supreme Court judgment among care providers
- Ensuring awareness of the need to reduce restraint and restrictions and promote liberty in care plans
- Mapping any additional requirements for Best Interest Assessors (BIAs) and working collaboratively with other Local Authorities to reduce training costs
- Reviewing information on the number of individuals in supported living arrangements to identify those individuals whose arrangements should be reviewed