



MAYOR AND CABINET

Permission to procure Lewisham Advocacy Centre

Date: 14th September 2021

Key decision: Yes

Class: Part 1.

Ward(s) affected: All wards

Contributors:

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Outline and recommendations

We currently provide statutory and community mental health advocacy services using two separate working models and two separate providers. COVID19 has highlighted opportunities to reduce inefficiencies and improve system flow if a new model is adopted. Changes in legislation to be implemented by April 2022 also require a review of service model and workforce plans.

This paper presents the case for the open tender of a single Lewisham Advocacy Hub that would seek to address current issues and promote smoother, more efficient working with our staff and service users.

A single supplier contract with a duration of 36 months (from 22nd February 2022 to 31st March 2025) with an option for extend for a period of up to 2 years. The estimated contract value is £200,000 per year, with a total contract cost of £1,000,000.

1. Summary

- 1.1. This document is intended to outline the local need and demand for hospital and community advocacy within the borough, as well as recommend procurement options for services from February 2022 onwards.
- 1.2. Section 67 of The Care Act 2014 outlines the Local Authority duty to arrange independent advocacy if the authority considers an individual would experience 'substantial difficulty' in participating in (amongst other things) their assessment and / or the preparation of their care and support plan.
- 1.3. Currently Lewisham arranges advocacy for adults via two key contracts: the integrated community advocacy service and our hospital discharge service. Learning from the delivery of these two contracts, in conjunction with legislation changes, have led to the

requirement of a new service that provides professionals and patients within the system to access a 'one-stop shop' for all advocacy requirements.

- 1.4. This paper outlines the intended approach to recommissioning advocacy services to ensure service provision beyond February 2022.

2. Recommendations

- 2.1. Mayor and Cabinet are recommended to give approval for the procurement of a new Lewisham Advocacy Service for a period of 3 years with the option to extend for up to a period of 2 years at an estimated value of £1,000,000. The annual cost of the contract is £200k per annum.

3. Policy Context

Legislation

- 3.1. Section 67 of the **Care Act 2014** outlines the Local Authority's statutory duty to appoint an independent advocate where an individual may experience 'substantial difficulties' in being involved in discussions and decisions related to their care. This duty applies at any stage of an assessment, planning, care review, safeguarding enquiry or safeguarding adult review. Also it applies to all settings, including care homes and prisons.
- 3.2. The 2007 amendments to the **1983 Mental Health Act** clarified those individuals for whom the statutory duty applies:
 - admitted to hospital and sectioned under the mental health act (even if they are currently on leave of absence from hospital) apart from those patients detained under sections 4, 5(2), 5(4), 135 or 136;
 - Subject to Guardianship under the Act
 - placed on a Community Treatment Order
 - that does not have the capacity to make specific decision around their care
 - who needs to make a decision around residential care/nursing home
 - that does not have a friend or family member who is able to make a decision that is in their best interest
 - being considered for a treatment to which section 57 applies ("a section 57 treatment" under the Mental Health Act)
 - under 18 and being considered for electro-convulsive therapy or any other treatment to which section 58A applies ("a section 58A treatment" under the Mental Health Act).
- 3.3. **The Mental Capacity Act 2005:** The Mental Capacity Act, like the Care Act, gives some people who lack capacity access to Independent Mental Capacity Advocacy (IMCA) in order to represent their views. However the duty to provide independent advocacy under the Care Act is broader and applies in a wider set of circumstances.
- 3.4. **The Mental Capacity (Amendment) Act 2019** introduced the Liberty Protection Safeguards (LPS) to replaced the current Deprivation of Liberty Safeguards (DoLS) which are considered by parliament to be too bureaucratic. LPS will have a significant impact on the roles and responsibilities of the Local Authority, Statutory Services and Advocates. LPS is expected to be fully implemented within boroughs by April 2022. This legislative change will amend the roles required within the borough, with Approved Mental Capacity Professionals expected to be in role by the implementation date.
- 3.5. Related legislation includes:
 - The Mental Health Act 1983 (amended in 2007)
 - The Care Act 2014

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- No Health without Mental Health
- NHS Long Term Plan
- NHS Five Year Forward View for Mental Health
- Mental Capacity Act 2005
- Health and Social Care Act 2012
- The Care and Support Regulations 2014
- Improving access to mental health services by 2020

3.6. The new proposed Lewisham Advocacy Hub and the proposed approach to commissioning the service aligns with the Council's Corporate Strategy. Specifically the priorities, "*Delivering and defending: health, social care and support*".

3.7. Related local and regional policies and strategies include:

- Health & Wellbeing Strategy
- Violence Against Women & Girls Strategy
- Safer Lewisham Plan
- A Safer City for All Londoners: Police & Crime Plan 2017-2021
- South East London CCG Sustainability & Transformation Plan
- Our Healthier South East London Recovery Plan

4. Background and context

4.1. Lewisham residents experience high levels of deprivation, unemployment and a lack of fixed or appropriate accommodation¹. These compounding issues manifest in the significantly higher rates of serious mental illness within Lewisham, when compared to the national average^{2,3}. Equally, a higher proportion of individuals in Lewisham require a Care Plan Approach and a higher proportion claim benefits due to a mental or behavioural disorder than their counterparts across London⁴.

4.2. Lewisham is a mixed ethnicity borough, with 51% of residents identifying as belonging to a non-white ethnic minority community; this is expected to grow over the next decade, with this number rising in the younger populations (61%)^{5,6}. Those from BAME populations are more likely to be diagnosed with serious mental illnesses such as schizophrenia, more likely to experience poor outcomes from treatment and more likely to first present to mental health services in crisis than their white counterparts^{7,8}.

4.3. Lewisham also has high prevalence of substance misuse, with this substance misuse commonly co-occurring alongside mental health issues⁹.

4.4. The above groups are more likely to experience acute-stage interactions with mental health services and as a result, are less likely to have the capacity to fully engage and interact with decisions regarding their care.

4.5. In order to support these individuals, we currently offer statutory and informal advocacy

¹ <https://lewisham.gov.uk/-/media/files/imported/mental-20health-20and-20emotional-20wellbeing-20strategy-20for-20children-20and-20young-20people.ashx>

² <http://www.lewishamjsna.org.uk/sites/default/files/Improving%20Mental%20Health%20and%20Wellbeing.pdf>

³ <https://councilmeetings.lewisham.gov.uk/documents/s72342/Item%204a%20-%20Mental%20Health%20JSNA.pdf>

⁴ <http://www.lewishamjsna.org.uk/adults/mental-health/what-do-we-know/facts-and-figures#:~:text=Poor%20mental%20health%20has%20a,This%20equates%20to%203%2C423%20people.>

⁵ <https://councilmeetings.lewisham.gov.uk/documents/s72342/Item%204a%20-%20Mental%20Health%20JSNA.pdf>

⁶ <http://www.lewishamjsna.org.uk/a-profile-of-lewisham/social-and-environmental-context/ethnicity#:~:text=Lewisham%20is%20the%2015th%20most,the%20total%20population%20of%20Lewisham.>

⁷ https://www.clinks.org/sites/default/files/2018-09/race_mental_health_and_criminal_justice_30.pdf

⁸ Uhrig, N. (2016), Black, Asian and Minority Ethnic disproportionality in the Criminal Justice System in England and Wales. [online] London: Ministry of Justice. Available at: <https://www.gov.uk/government/publications/black-asian-and-minority-ethnic-disproportionality-in-the-criminal-justice-system-in-england-and-wales> [accessed 10.07.2017]

⁹ <https://councilmeetings.lewisham.gov.uk/documents/s72342/Item%204a%20-%20Mental%20Health%20JSNA.pdf>

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across the borough, via two separate services. This paper outlines the intention and justification for moving to a 'one-stop' Lewisham Advocacy Hub in the borough.

5. Current provision

- 5.1. The Adult Integrated Commissioning Team on behalf of Lewisham Council and South East London CCG currently commissions an Integrated Advocacy Service that provides statutory advocacy including IMHA, IMCA, CCA, RRPS to those who individuals that meet the eligibility criteria. Community advocacy is also provided via this service.

Table 1: Types of advocacy provided

| Type | Role |
|--|--|
| Independent Mental Capacity Advocate (IMCA) | People who lack capacity, and do not have an appropriate family member or friend to represent their views, are legally entitled to an IMCA, if decisions are being made about serious medical treatment or a change of accommodation. |
| Independent Mental Health Advocate (IMHA) | IMHA advocates help people who have been detained under certain sections of the Mental Health Act and support people to understand their rights, including their right to appeal. |
| Independent Care Act Advocate (CAA) | ICAA advocates can help people who are eligible to engage and participate in assessments that can decide their level of care and support. This could include any needs assessment, care plans, safeguarding enquiries and appeals about a local authority's decision under the Care Act. |
| Relevant Person's Paid Representative (RRPR) | For those who are subject to the Deprivation of Liberty Safeguards (DoLS) (part of the Mental Capacity Act 2005), and have no one appropriate to take on the role of representative, RRPRs maintain contact with the relevant person and represent and support them in all matters relating to the deprivation of liberty safeguards |
| Community Advocacy | This service is for people over 18, who are residents of the London Borough of Lewisham and have a mental health diagnosis or are currently accessing mental health services. |

- 5.2. A hospital discharge advocacy pilot is also currently running in Lewisham, funded by the Better Care Fund. This project provides advocacy where it is required for patients in University Hospital Lewisham to support hospital discharge and movement back into the community.
- 5.3. Demand for statutory advocacy services has fallen over the COVID19 period, reflecting activity levels within broader mental health services (table 2). We expect numbers to return to pre-COVID levels following the lifting of restrictions.

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Table 2: Statutory advocacy activity within the borough

| Year | IMCA | IMHA | ICAA | RRPR | Discharge | Total |
|---------|------|------|------|------|-----------|-------|
| 2019/20 | 132 | 157 | 29 | 146 | 51 | 515 |
| 2020/21 | 105 | 111 | 29 | 140 | 30 | 415 |

- 5.4. Non-statutory community advocacy numbers rose by 20% over the lockdown period from 106 in 2019/20 to 123 in 2020/21, with a much larger number of people attending for support with housing and related socio-economic issues resulting from the destabilisation caused by COVID19. This increase can be attributed to a dip in statutory needs during this period and therefore increased capacity to attend to non-statutory needs. We expect to see these numbers return to 2019/20 numbers following COVID19 recovery. While we will seek to identify providers who can offer non-statutory advocacy where capacity allows, the delivery of non-statutory services will not be a core element of the new service.
- 5.5. The total cost of our current mental health advocacy contracts are as follows:
- Integrated Advocacy Service - £138,596 per annum
 - Hospital Discharge Advocacy Project - £58,000 per annum
- 5.6. The move to Liberty Protection Safeguards will increase demand on the service to incorporate all residents over 16 and those in the community (whether in supported accommodation or at home). Work is currently underway to map out expected impact of these changes within the borough.
- 5.7. Under the current contracts, COVID19 exposed the unnecessary bureaucracy resulting from splitting the current responsibilities across two separate providers and two separate contracts. Working arrangements between various providers and partners during the COVID19 changes and uncertainties were disrupted and the rate of inappropriate referrals rose during this time. Efficiencies are sought through the streamlining and centralisation of all Mental Health advocacy provision in the borough.
- 5.8. Due to the specialist nature of the advocacy provided by the service, it is considered appropriate to commission this service from an external provider, rather than bring the service in house.

6. Proposed service model

- 6.1. It is proposed that a new Lewisham Advocacy Hub be commissioned, which would act as a one-stop shop for those in Lewisham who require statutory mental health advocacy services. A new approach where staff can receive support and guidance regarding types of advocacy and when best to apply them is considered to improve the process of accessing advocacy and reduce delays to advocacy caused by inappropriate referrals and resulting signposting/re-referrals.
- 6.2. While we expect to see activity numbers revert to expected levels following the lifting of lockdown restrictions, changes in legislation will likely result in a rise in demand across the borough for statutory mental health advocacy. A newly combined service would expect to take up to 650 referrals per year (based on agreed hourly averages per referral).
- 6.3. The new contract cost is estimated to be £200,000 per annum for three years, with the option to extend for up to 2 years at a total contract cost of £1,000,000.
- 6.4. Funding for the service would be split between London Borough of Lewisham and South East London CCG.

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7. Procurement Approach

- 7.1. Commissioners will seek to undertake an open competitive tendering approach.
- 7.2. A single supplier contract with a duration of 36 months (from 22nd February 2022 to 31st March 2025) with an option for extension of 24 months, up a total of 60 months will be procured via an open competitive tender approach
- 7.3. Per year, the estimated contract value will be £200,000 per year, with a total contract cost of £1,000,000.
- 7.4. The Local Authority procurement processes will be followed, led by commissioners from Lewisham Borough Council.

8. Financial implications

- 8.1. The proposed Lewisham Advocacy Service contract is for a period of 3 years with the option to extend for up to a period of 24 months at an estimated value of £1,000,000. The annual cost of the contract is £200k per annum.
- 8.2. The budget attached to this project is comprised of £138k (TBC) per annum for the Integrated Advocacy Service from the Adult Social Care Revenue Budget and £58k per annum for the Hospital Advocacy service from the Better Care Fund.
- 8.3. Better Care Funding is subject to annual review, therefore the Hospital Advocacy element of the new contract will be subject to available funding. A clause within the contract will be drafted outlining that the Hospital Advocacy is subject to annual review and available funding.
- 8.4. There is sufficient budget provision for the contract and there are no savings attached.

9. Legal implications

- 9.1. The report seeks approval to future delivery of an Integrated Advocacy Service by an external provider. Given the potential spend on this contract (at a length of 3 + 2 years) this contract would be categorised by Contract Procedure Rules as a Category A contract. The report explains why an open procurement is the recommended option.
- 9.2. Assuming that Mayor and Cabinet accepts the recommendation for future delivery of by an external provider, Contract Procedure Rules place requirements on how that should happen. The Rules require that when letting contracts steps must be taken to secure value for money through a combination of cost, quality and competition, and that competitive tenders or quotations must be sought depending on the size and nature of the contract (Rule 5). Given the potential spend on this contract the procurement regulations (Public Contracts Regulations 2015) will also apply. The requirements of both Contract Procedure Rules and the procurement regulations would be satisfied by an open tender procedure. The process for procurement and the award of the contract would have to be in accordance with the Contract Procedure Rules. As a Category A contract, it would be for Mayor and Cabinet to take a decision on the award of any contract.
- 9.3. This is a key decision and therefore needs to be included in the key decision plan.
- 9.4. In taking this decision, the Council's public sector equality duty must be taken into account. It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.5. In summary, the Council must, in the exercise of its functions, have due regard to the need to: eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; foster good relations between

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people who share a protected characteristic and those who do not.

- 9.6. It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above. The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made bearing in mind the issues of relevance and proportionality and understanding the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.
- 9.7. The Equality and Human Rights Commission (EHRC) has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance. The Council must have regard to the statutory code in so far as it relates to the duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found on the EHRC website.
- 9.8. The EHRC has issued five guides for public authorities in England giving advice on the equality duty. The 'Essential' guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice.

10. Equalities implications

- 10.1. The Council's Comprehensive Equality Scheme for 2012-16 will provide an overarching framework and focus for the Council's work on equalities and help ensure compliance with the Equality Act 2010.
- 10.2. One of the key quality criteria measured during any commissioning process is "Processes for addressing equality and diversity". All the services contained in this report will be subject to robust contract monitoring processes which include evaluating fair access to services for all.

11. Climate change and environmental implications

- 11.1. The Council has made a commitment to making the borough carbon neutral by 2030.
- 11.2. The contracts set out in this report will not have any negative impact on the rate of energy consumption or increase of carbon admissions.
- 11.3. Recycling should be proactively promoted within the contracts and will be monitored during scheme visits and will be discussed with staff

12. Crime and disorder implications

- 12.1. The services in this report will have a positive impact on the care and recovery of those with a forensic history.

13. Health and wellbeing implications

- 13.1. The services in this report will have a positive impact on health, mental health, and wellbeing by providing support and advice to individuals who have difficulty engaging in decision-making processes

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14. Social Value implications

- 14.1. The council is an officially accredited London Living Wage (LLW) Employer and is committed to ensuring that, where appropriate, contractors and subcontractors engaged by the council to provide works or services within Lewisham pay their staff at a minimum rate equivalent to the LLW rate. Successful contractors will be expected to meet LLW requirements and contract conditions requiring the payment of LLW will be included in the service specification and contract documents
- 14.2. The incorporation of Social Value into Lewisham contracts will significantly help the Council to deliver on its strategic corporate and Mayoral priorities and deliver added value for the borough as a whole.

Background papers

n/a

15. Glossary

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| In-house | Services delivered by the Council instead of commissioning third parties. |
| Innovative | New; pioneering. Delivering services in ways which use imagination and new ideas about delivering services. Innovation is at the core of the Council's aspiration to deliver better services to local communities |
| In-Source | The process from delivering a service by a third party to delivering a service by the Council. |
| Integrated Care System (ICS) | Joined up, coordinated health and social care that is planned and organised around the needs and preferences of the individual, their carer and family. This may also involve integration with other services for example housing. |
| Integrated Community Based Care | Coordination of care services for defined groups of people, e.g. older people, people with learning disabilities, etc. (King's Fund) |
| Lay Visitors | Citizens taking part in the contract monitoring process with an aim to give an independent perspective of how services are run. They are usually volunteers with an interest in local services and communities. Their views are valued and included in the monitoring reports produced by Council officers |
| Lead Providers | Three homecare providers who were awarded contracts by the Council in 2016 to provide all homecare services in the borough. They are each allocated a geographical area within which they have the sole responsibility to provide home care. |
| Lewisham Health and Care Partners | Lewisham Health and Care Partners is a partnership of the main health and care commissioners and providers in Lewisham. The partners include NHS Lewisham Commissioning Group, Lewisham Council, One Health Lewisham Ltd GP Federation, South London and Maudsley NHS Foundation Trust and Lewisham and Greenwich NHS Trust (Lewisham CCG) |
| Market Shaping | Working together with other partners to encourage services to meet local need and ensuring there is enough supply of different types of services. |
| Market Sustainability | Ensuring a robust and a varied local market of providers by awarding financially viable contract to a range of providers; avoiding to rely on a small number of providers who may be too 'big to fail'. |

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| Multi-Disciplinary Team (MDT) | A Multidisciplinary Team is a group of professionals from one or more clinical disciplines who together make decisions regarding recommended treatment of individual patients/service users. MDTs may include social care professionals and independent providers. |
| NHS Fully Funded Continuing Healthcare | Ongoing care outside hospital for someone who is ill or disabled, health care arranged and funded by the NHS. This type of care can be provided anywhere, and can include the full cost of a place in a nursing home. It is provided when your need for day to day support is mostly due to your need for health care, rather than social care. The Government has issued guidance to the NHS on how people should be assessed for continuing health care, and who is entitled to receive it. |
| Options Appraisal | The options appraisal allows a number of different delivery model options to be explored and evaluated against a set of agreed criteria, leading to the selection of the preferred option. This stage can commence once the function of the service has been clearly defined. (www.gov.uk) |
| Outcome Focussed Care | In social care, an 'outcome' refers to an aim or objective you would like to achieve or need to happen – for example, continuing to live in your own home, or being able to go out and about. You should be able to say which outcomes are the most important to you, and receive support to achieve them. |
| Personal Budgets | Money that is allocated to you by your local council to pay for care or budget support to meet your assessed needs. The money comes solely from adult social care. You can take your personal budget as a direct payment, or choose to leave the council to arrange services (sometimes known as a managed budget) – or a combination of the two. An alternative is an individual service fund, which is a personal budget that a care provider manages on your behalf. A personal health budget may also be available: it is a plan for your health care that you develop and control, knowing how much NHS money is available. |
| Personalisation | The principle behind the current transformation of adult social care services, and also related to health services. Personalisation refers to the process of providing personalised, flexible care that is intended to promote the independence of those who need care. |
| Primary Care Networks | From 1 July 2019, all patients in England will be covered by a primary care network. They aim to integrate primary care with secondary and community services, and bridge a gap between general practice and other types of healthcare services. Primary Care is health care services provided in the community as the first point of contact, e.g. a GP or an advice clinic (includes GPs, community pharmacists, dental, optometry (eye health)). |
| Procurement | The process of buying or purchasing goods or services. |
| Public Health | “Public health is generally thought of as being concerned with the health of the entire population, rather than the health of individuals – and therefore requiring a collective effort – and as being about prevention rather than cure. The three areas of public health are: health improvement; health protection; and health services. Under the Health and Social Care Act, responsibility for public health is to be taken over from the NHS by local government. A national public health service, Public Health England will also be created. |
| Social Prescribing | Connecting people to community groups and services, for example, a local arts and crafts group. Primary purpose of social prescribing is to combat social isolation and to help people take part in meaningful activities. |
| Stakeholder | A person with an interest or concern in something, community services in this case. |

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| Sustainable Community Strategy | The role of the sustainable community strategy is to set out the strategic vision for a place. It provides a vehicle for considering and deciding how to address difficult cross-cutting issues such as the economic future of an area, social exclusion and climate change. (www.local.gov.uk) |
| Sustainable Provider Operating Costs Tool (SPOCT) | A costing mechanism developed by ADASS, which aims to help commissioners and providers decide on rates that are sustainable and effective |
| The Care Act | A law passed in Parliament in 2012, bringing together various pieces of legislation and setting out new duties and expectations from local authorities |
| Time and Task | Care activity delivered at a specific time |
| Tissue Viability | Tissue viability is a relatively new discipline, which started in the 1980s and has been defined as a growing speciality that primarily considers all aspects of skin and soft tissue wounds, including acute surgical wounds, pressure ulcers and all forms of leg ulceration (Tissue Viability Society, 2014). |
| Urgent Community Response Accelerator Scheme | South East London's Integrated Care System (ICS) is to become one of seven new urgent community response accelerator sites across the country. It aims to provide an assessment in a patient's home if they are in a crisis. |
| Wellbeing | Used by the World Health Organisation (1946) in its definition of health as "a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity". More recently the concept was described as "feeling good and functioning well" (New Economics Foundation, 2008). Creating wellbeing (of which good physical health is a component) requires the mobilisation of the widest assets to ensure community cohesion, safety and so on. |
| Workforce Development | Support for workers to become capable, skilled and confident. |

16. Report contact

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