

<b>Decision maker:</b>	<b>Director for children's wellbeing</b>
<b>Decision date:</b>	<b>15 May 2018</b>
<b>Title of report:</b>	<b>Provision of children's rights and advocacy service</b>
<b>Report by:</b>	<b>Commissioning officer, Childrens joint commissioning manager</b>

## **Classification**

Open

## **Decision type**

Non-key

## **Wards affected**

(All Wards);

## **Purpose and summary**

To make a decision on the delivery of the children's rights and advocacy service from August 2018.

## **Recommendation(s)**

**(a) That the children's rights and advocacy service is provided by the council's corporate customer information and equality team from 1 August 2018, at an annual cost of £48k.**

## **Alternative options**

1. Do nothing. The implication of doing nothing would be that the existing contract would expire on 31 July 2018. This is not recommended as the council has a statutory duty to provide advocacy for looked after children, who request representation, including making complaints. The service also undertakes non-statutory work by supporting children with disabilities and children open to social care who are a child in need or on a child protection plan.

2. The current contract could be extended for two years on an as-is basis or by reducing to provide statutory functions only. Continuation as-is would not help the council to achieve its medium term financial strategy (MTFS). Provision of only statutory functions would mean that children subject to child protection would no longer be able to access advocacy, which could also risk criticism by Ofsted at a future inspection. Advocacy provides a valuable opportunity to gather feedback from children that could help the local authority to improve the quality of its children's social care services, however the provider has indicated an unwillingness to facilitate such a feedback pathway. For these reasons, a contract extension is not recommended.
3. To tender a new contract. Existing staff are on terms and conditions above the sector pay, which is likely to discourage providers from tendering. Past experience is that very few responses have been received when a tendering exercise has been undertaken, and that the provider market is small in this sector. Recent experience of a neighbouring authority also suggests that no bids would be received due to the low contract value.
4. For the service to be brought in-house and be redesigned deliver statutory work only. Whilst potentially annual savings of £35k could be made, redundancy costs of £14,500 may apply in year 1. This option is not recommended, as there is a risk Ofsted would be critical of non-statutory work ceasing. Furthermore, reduced staffing capacity would allow for little flexibility or cover to offer a responsive service during periods of holiday or absence.

## Key considerations

5. The council has a statutory duty to provide an effective advocacy service for looked after children and care leavers aged up to 21 years, who are making or intending to make a complaint under the Children Act 1989. The Children and Social Work Act 2017 is being implemented from 1st April 2018 and raises the age of care leaver support to 25 for all young people. The current service also supports children with disabilities, children in need and those subject to child protection processes, which although not a statutory duty, promotes equality.
6. Ofsted inspectors will be looking to see that Herefordshire has an advocacy service that ensures children and young people are listened to and feedback about the effectiveness of the help, care or support they receive informs practice and service development. The recommendations of the report will support social care to seek and evidence children's views through a range of methods and sources.
7. The current provider, NYAS, was first awarded a 3 year contract in 2012 and following a competitive tendering exercise, a new contract was awarded in 2015, which is scheduled to end on 31 July 2018. Over the lifetime of the current contract (2015 – 2018), the service has cost £210k.
8. The national standards for the provision of children's advocacy services states that as far as possible the service should be funded and managed in a way that ensures independence from the commissioning organisation, which, in this case, is the children's wellbeing directorate. Independence from operational children's social care services will be maintained by placing the advocacy service under the management of the customer information and equality team within the council's economy, communities and corporate directorate. Processes will be in place to ensure separation of functions are clearly set out and adhered to in order for the council to comply with its statutory duties.

9. The service will consist of two part-time advocate workers, who are expected to transfer from the incumbent provider. Workers will provide confidential and independent information, advice, advocacy, representation and support to children and young people. They will also champion the rights and needs of young people and enable them to express their views directly to decision makers. Advocacy must be child led and provided in a way which best meets the child's needs.
10. Children and young people can self-refer or be referred by social workers and or other professionals if they have full consent of the child or young person. It is important children and young people who use the service are confident in its independence from the service, or individual, who their complaint is against. This will be managed by the service being located and managed outside of children's wellbeing directorate operational services.
11. During the period, April 2015 up to 31 December 2017, the current advocacy service supported an average of 135 cases per annum, of which 40% have been statutory work. The gender split within the LAC population has remained fairly constant at nearly 50/50. Of the young people who accessed advocacy from April 2015 to March 2017, 55% were female. However so far this year, 54% of referrals have been made by males. It could be assumed this increase is partly due to the unaccompanied asylum seeking children (UASC) cohort being predominantly male.
12. During the same period, the advocacy service has supported 22 disabled young people, of which approx. 40% have emotional/behavioural difficulties and 35% have communication difficulties. Advocates have had training required to support them to work with children of all needs particularly with disabilities where communication skills can be an issue. It is important to ensure their professional development, skills and knowledge continues to be up to date. This could be supported by utilising expertise within the authority and accessing training, where applicable.
13. Moving forwards, it is estimated up to 55 LAC/care-leaver cases will require statutory advocacy support per year:
  - 85% of cases are expected to be 'standard', requiring 5 hours support each
  - 15% are expected to be complex, requiring 10 hours of support each.

It is anticipated total demand for statutory duty work would be in the region of 320 hours per year, equating to 0.2 FTE.

Up to 100 child-in-need /child protection (non-statutory) cases per year are expected to require 9 hours of non-statutory support, which equates to 900 hours or 0.55 FTE.
14. Therefore the minimum recommend staffing level for statutory and non-statutory work would be 0.8fte, which would allow for some slight growth in demand.

## **Community impact**

15. Herefordshire's children and young people plan (2015 - 18) sets out a vision to support children & young people to have the best start in life and grow up healthy and safe within supportive family environments. To listen to the voices of children and young people about their needs and how the council can meet them. A key objective within the plan is to protect children from harm and to support children and young people to achieve success in life, learning and future employment.

16. As corporate parents, the council has a responsibility to ensure all looked after children are listened to and treated with respect. Through providing independent and confidential information, advice, advocacy and representation to all eligible child, the advocacy service supports and champions the voice and needs of children and young people in the county.
17. Corporate parenting strategy (2015 - 18) acknowledges the council has to improve how children and young people's views influence policy and practice. Children say they dislike completing consultation forms, which is what social care has been reliant upon, to understand their wishes and feelings. By integrating the service into the customer information and equality team, it will support in widening its participation throughout the council. Feedback from children and young people (as individuals and as a collective group) about the effectiveness of the help, care and support they receive will inform not only the advocacy service but also the development of social care services.

## **Equality duty**

18. This service is available to looked after children, children in need, those subject to child protection proceedings and children with disabilities. Under the UN Convention on the Rights of the Child they are expected to have the same opportunities and rights as for other children.
19. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

  - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
20. The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to any of the nine 'protected characteristics' (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). In particular, the council must have 'due regard' to the public sector equality duty when taking any decisions on service changes.
21. Bringing this service in house demonstrates that the council is taking its commitment to the Equality duty. An Equality impact assessment has been completed (see appendix 1).

## **Resource implications**

22. The current contract to deliver the service for 2015 - 2018 has a maximum annual cost of £70k. Based on the projected service demands (paragraphs 13-14), the required financial resource is £48k per year. This will result in savings in the region of £22k per full year, compared to the current contract which will contribute to the council's medium term financial strategy. The £22k saving achieved by a reduction in the current management fee.

23. Staff who transfer will remain on their current terms and conditions. These have been accounted for when calculating staffing levels and budget costs.
24. That if demand for the service increases over the allocation, Children's Well Being Directorate will consider how statutory work could be further prioritised and, if necessary, make a case for a budget pressure or realign its spend to support the service.

## **Legal implications**

25. Provision of the Children's Rights and Advocacy Service is enshrined in legislation for looked after children through the Children Act 1989 and regulation and guidance.
26. The council has a statutory duty to provide advocacy services for looked after children making complaints and to appoint independent visitors.
27. Section 24D Children Act 1989 states that every local authority shall establish a procedure for considering representations (including complaints made by them by a relevant child (former looked after child aged 16-17); or a young person who is a former relevant child (until they reach age 21 or complete a programme of training or education if this extends after 21st birthday – until the age of 25).
28. Section 26 of the Children Act 1989 states that the views of looked after children will be sought when undertaking case reviews in relation to the care of that child.
29. Section 26A Children Act 1989 states that every council shall make arrangements for the provision of assistance to children and young people, to include assistance by way of representation In providing this assistance council's must comply with relevant regulations and shall give such publicity to their arrangements for the provision of assistance under this section as they consider appropriate.
30. Regulation 4 of the Advocacy Services and Representations Procedure (Children) Amendment Regulations 2004 provides that where a council becomes aware that a person or child intends to make representations they must provide the person or child with information about advocacy services and offer help in obtaining an advocate.
31. Section 4 of the guidance –Providing Effective Advocacy Services for Children and Young People making a complaint under Children Act 1989 and national Standards for the Provision of Children's Advocacy Services 2002 sets out the need to maintain the independence of the advocates, stating that the advocacy or children's rights service should, as far as possible, be funded and managed in a way that ensures independence from the commissioning organisation.
32. Bringing the service in house requires a separation from CWB which is achieved by placing the service within the Equality Team (ECC).
33. The separation of functions must be clearly set out and adhered to in order for the council to comply with its statutory duties and avoid legal challenge or complaint to the Ombudsman.
34. The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) applies as there is a change in service provider by bringing the work in house. Only if employees are assigned will they transfer. As TUPE applies this means that those in the organised group of employees who are assigned to that group immediately before the

transfer will automatically become employees of Herefordshire Council on all their existing terms of employment. All rights, powers, duties and liabilities pass to the council and the council must consult with representatives of the affected employees in relation to the transfer.

## **Risk management**

35. If the recommendation is not approved the council will not be able to meet its statutory duty. Ofsted could have a negative view which could be reflected in its inspections on safeguarding of children which include a review of these statutory services, their availability and effectiveness.
36. As with externally provided services, the children's commissioner would have oversight of service performance through a service level agreement.
37. There would be a risk of reduced service availability if a single worker was appointed at 0.8fte. Therefore the proposal is to appoint two staff at 0.4fte and the service manager will need to ensure there are processes in place to make sure referrals are sighted within 1 working day in case of urgent referrals i.e. complaints about impending placement move.
38. There is a risk that current staff would refuse to transfer to the council. Whilst this would effectively terminate their employment without any right to compensation, it would result in the need to recruit. Staff who agree to transfer over, would do so on their current terms of employment and all rights, powers, duties and liabilities under their employment contracts passes to the council. There would be no opportunity to bring these in line with council terms and conditions based on economic or technical or operational reasons.
39. If demand for the service exceeds capacity, the non-statutory work could be delivered in different ways, which wherever possible, would be based on the child's choice. This could include children identifying a 'trusted adult', who they want to represent their views within the child protection processes; a suggestion made during a Corporate Parenting Panel Take over event.
40. There is a risk children and young people will not perceive the service as independent from children's social care service. There will be processes in place to ensure there is clear separation between the service and children's wellbeing. Children and young people could also be involved in designing material to brand and market the service, which will promote its independence from operational children's social care.

## **Consultees**

41. Children have been consulted, however the response rate has been low. It suggests not all children are aware of the advocacy service and how they can access it. This is supported by the contract monitoring data, which shows approx. 9% of LAC and care leavers accessed the service from 1 April 2017 to 31 December 2017, and this reduced to 6% when including children in need and those on child protection plans. Of those who have accessed it, few understand their rights. The service will be extensively marketed to ensure all children and their social workers are aware of it and how to make referrals.
42. Feedback from children and young people who have accessed the service in the 3 months up to December 2017 included;

- what I thought about was talked about at the meeting and they listened to what I wanted them to know
- I got the chance to say what I wanted and I understood what this meeting was about, what is happening and the plan feels more personal to me and my life advocate coming in and listening to me made a lot of difference

## **Appendices**

Appendix 1 - Equality impact assessment

## **Background papers**

None identified