

Title of report: Reprocurement of Herefordshire Independent Adult Advocacy Services

Decision maker: Cabinet member adults, health and wellbeing

Decision date: 29th January 2026.

Report by: Commissioning Manager – Living Well

Classification

Open

Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

(All Wards);

Purpose

To approve the commissioning of Independent Advocacy Services for adults by means of an open tender process. The current contract to deliver independent advocacy expires on 31 July 2026

Recommendation(s)

That:

- a) the commissioning of an independent advocacy service for adults through an open procurement process be approved.
- b) The contract will be for an initial period of 5 years but with the option to extend for up to an additional 24 months.
- c) the director for adult and communities be authorised to take all operational decisions necessary to implement the service including award of contract for the independent advocacy service for a period of up to five years and with a maximum value of £1.5m.

Alternative options

- a) **Not to commission the advocacy service.** This is not recommended as this would mean the council will fail to meet statutory duties in respect of Mental Capacity Act 2005, Mental Health Act 1983 as amended, Health and Social Care Act 2012 and Care Act 2014. The council is required to provide these services.
- b) **Deliver the service in house.** This option is not recommended as all these advocacy elements are required to be independent of local authorities and NHS Trusts. As the Care Act regulations stipulate, advocacy must be independent of the local authority, operated by an organisation with its own constitution, code of practice and complaints procedure. Therefore, it is not appropriate to deliver this service in-house and an external provider must be commissioned to deliver advocacy services.

Key considerations

1. Local authorities have a legal duty to provide independent advocacy services to ensure that individuals - particularly those who are vulnerable or lack capacity - can actively participate in decisions regarding their care, treatment, and rights. These responsibilities are designed to uphold principles of inclusion, fairness, and safeguarding, and apply in situations where there is no suitable person available to support the individual. Advocacy plays a vital role in ensuring that people's voices are heard, their preferences are respected, and their rights are upheld throughout statutory processes such as assessments, decisions about treatment, safeguarding enquiries, and complaints.
2. The current contract, which commenced in August 2021 ([Decision - Commisioning of Independent Advocacy Services - Herefordshire Council](#)) is due to end on 31 July 2026, with the Invitation to Tender (ITT) scheduled for publication during January 2026. The new contract will commence on 1 August 2026, with a minimum term of five years with an option to extend the contract for up to two years (5+1+1) to provide greater consistency for Herefordshire Council and prospective providers.
3. The Independent Advocacy Service delivers statutory advocacy in accordance with the Mental Capacity Act 2005, Mental Health Act 1983 (as amended), Care Act 2014, and Health and Social Care Act 2012. In addition to statutory advocacy, and in line with the principles of the Care Act, the service also includes provision for **generic (community) advocacy**.
4. The service will cover the following forms of advocacy:

- a. **Independent Mental Capacity Advocacy (IMCA)** IMCAs are appointed under the Mental Capacity Act 2005 to support individuals aged 16+ who lack capacity to make critical decisions - such as regarding serious medical treatment or long-term accommodation - and have no appropriate family or friends to consult. IMCAs are legally required to ensure the person's rights and wishes are considered, acting independently of the NHS and local authorities.
- b. **Relevant Person's Representative (RPR)** - RPRs are appointed under the Deprivation of Liberty Safeguards (DoLS) for individuals aged 18+ who lack capacity and have no suitable representative. Their role includes maintaining contact, representing the person's views, and supporting challenges to decisions when necessary.
- c. **Independent Mental Health Advocacy (IMHA)** - IMHAs support individuals detained under the Mental Health Act 1983/2007, including those on Community Treatment Orders. They help individuals understand their rights, treatment options, and support them in meetings and decision-making processes. Our current provider operates an opt-out service for patients, so there is no need to wait for a referral to be made to the provider.
- d. **Care Act Advocacy** - Introduced under the Care Act 2014, this statutory advocacy supports individuals who would otherwise struggle to engage in social care processes and have no one appropriate to represent them. Advocates ensure the individual's views and rights are upheld during assessments, planning, reviews, and safeguarding enquiries.
- e. **NHS Complaints Advocacy (IHCA)** - IHCA offer free, independent support to individuals wishing to complain about NHS-funded care. They assist with understanding the process, drafting communications, attending meetings, and ensuring concerns are addressed appropriately.
- f. **Community Advocacy** - Although non-statutory, Community Advocacy aligns with the spirit of the Care Act. It supports adults unable to express their views and provides signposting, information, and advice, maintaining awareness of local service provision.

5. Table 1 below shows the number of cases completed across each of the advocacy areas over the past four years (2021 – 2025), while Table 2 breaks that down into the number of hours provided.

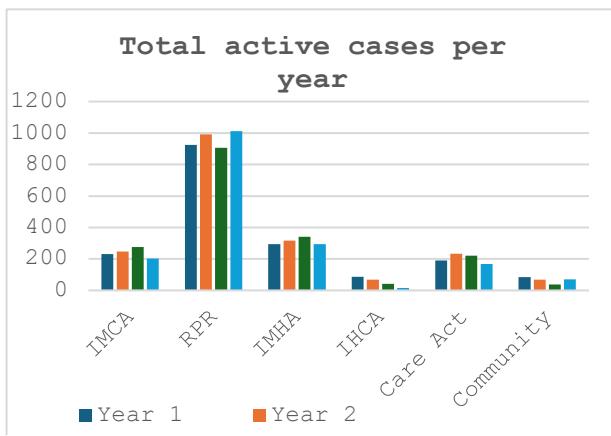


Table 1

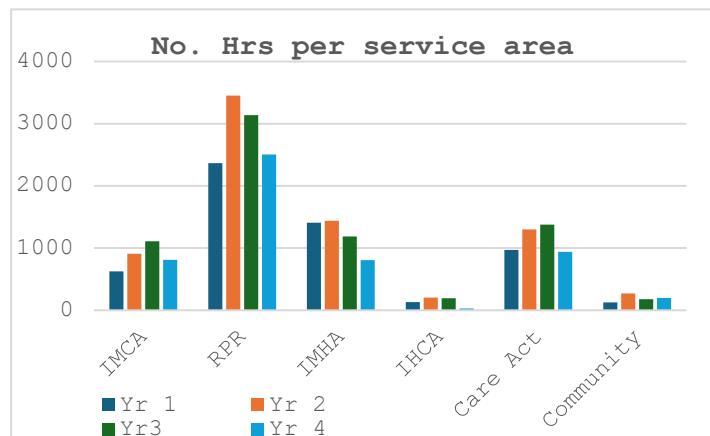


Table 2

6. Advocacy activity will be monitored through regular reviews of referral volumes and recorded hours across service areas, providing a clear picture of demand and delivery. Service effectiveness will be assessed by examining how well individuals are supported to participate in decisions, resolve complaints, and challenge care arrangements. Quality and responsiveness will be maintained through feedback from service users, case audits, and ongoing engagement with operational teams. Providers will be expected to build strong relationships with key services and adapt delivery in response to legislative changes or emerging needs.
7. The new service specification will embed the above principles and align with current best practice across all advocacy roles. Commissioners will also review approaches taken in other areas to inform service improvement and ensure that upcoming legislative developments, such as the review of the Mental Health Act 1983, or the introduction of Liberty Protection Safeguards are acknowledged, with providers prepared to respond to any changes in regulation or policy.
- 8.

Community impact

9. Success in advocacy services is measured by how effectively individuals are supported to be heard, understood, and actively involved in decisions about their care and rights. It is reflected in whether people feel informed, confident, and empowered to take part in decision-making.
10. When assessed against the aims and objectives of the Herefordshire Council Plan 2024–28, the Adult Independent Advocacy Service plays a significant role in supporting the council's core objective of enabling people to thrive. By empowering vulnerable adults, carers, and those facing disadvantage to participate fully in decisions about their care and rights, the service ensures that individuals are heard, informed, and supported. This approach helps residents

realise their potential, maintain independence, and benefit from strong, supportive communities.

11. The advocacy service actively reduces health inequalities and social exclusion by representing those who might otherwise be marginalised. It ensures that all residents, regardless of their circumstances, can access the support they need to live well, aligning with the County Plan's commitment to promoting wellbeing and inclusion across Herefordshire.

Environmental Impact

12. Herefordshire Council delivers and commissions a range of services for local residents, working with partners across the private, public, and voluntary sectors. Environmental sustainability, carbon neutrality, and the protection of the county's natural environment are shared priorities.
13. The service specification for the advocacy service addresses environmental impact by setting clear expectations for contractors and delivery partners. These include requirements to minimise waste and reduce energy consumption. Compliance with these requirements will be monitored and reported as part of routine contract management.

Equality duty

14. The Public Sector Equality Duty requires the council to consider how it can positively contribute to the advancement of equality and good relations and demonstrate that it is paying 'due regard' in our decision making in the design of policies and in the delivery of services.
15. The mandatory equality impact screening checklist has been completed for this decision, and it has been found to have low impact for equality.
16. Due to the potential impact of this decision being low, a full Equality Impact Assessment is not required. However the following equality considerations should be taken into account when making a decision about this activity:
 - Vulnerable and marginalised individuals will be actively supported to participate in decisions about their care and rights. The advocacy service will ensure accessible communication and inclusive practices, empowering people who might otherwise be overlooked or excluded. Their voices will be heard and their preferences respected throughout the process.
 - Equitable access to advocacy services will be promoted for all individuals, including those who may face barriers due to age, disability, or social disadvantage. The service will help to identify and address any practical, attitudinal, or systemic barriers to engagement. Information will be provided in accessible formats, support will be tailored to individual needs, and the diverse circumstances of service users will be recognised and accommodated.
 - Continuous monitoring and feedback mechanisms will be in place to identify emerging equality issues. Where new concerns are identified, the approach will be reviewed and

adapted to ensure the service remains fair, inclusive, and responsive to the needs of all individuals, but particularly those who may be at risk of marginalisation.

17. Advocacy services operate in accordance with the Equality Act 2010, which requires public bodies to address discrimination, promote equal opportunities, and encourage positive relations among various groups. Advocacy services ensure that individuals - particularly those who are vulnerable, marginalised, or face barriers due to disability, age, or social disadvantage - are empowered to participate fully in decisions affecting their lives. By supporting people to express their views, understand their rights, and challenge unfair treatment, advocacy directly contributes to eliminating unlawful discrimination and promoting equal access to services.
18. Furthermore, advocacy services play a crucial role in advancing equality of opportunity by proactively identifying and addressing barriers that may prevent individuals from engaging with health and social care systems. Through inclusive practices, accessible communication, and tailored support, advocacy helps to ensure that no one is placed at a disadvantage because of illness, disability or a protected characteristic.
19. A full Equality Impact Assessment has been completed for the provision of these advocacy services. It can be found at Appendix 1

Resource implications

20. Table 3 (Contract value) below shows the annual cost for the provision of the Independent Advocacy Service. 75% of the cost is provided via the Better Care Fund, whilst the remaining 25% comes via the Department of Health grant which funds the Independent Hospital Complaints Advocacy (ICHA) element.
21. Herefordshire and Worcestershire ICB contribute a small annual amount of £7,050 to cover the provision of IMCA's and RPR's where the individual is fully continuing healthcare (CHC) funded, because in those circumstances the ICB is responsible for the provision of advocacy support.

Table 3 – Contract value

	Estimated Annual Value	Contract Value (5 yrs)
	207,070.75	1,035,353.75
Onside Independent Advocacy		Budget 2025-26
Annual value of contract	207,947.00	
Value per month paid for:	17,328.92	
Advocacy services (C04641)- 75%	12,996.69	162,134.00
ICB (CHC/NHS) contribution		-7,050.00
		comes from 155,084.00 BCF

Funding part of the Healthwatch contract (ICAS) Advocacy services (C02036)- 25%	4,332.23	51,986.75	comes from DoH grant
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22. A meeting was held with the, Senior Finance Business Partner, regarding the financial framework for the procurement of the adult independent advocacy service contract. He confirmed his agreement with the proposed approach, recognising that the statutory nature of the service limits opportunities for cost reduction without compromising delivery. It was acknowledged that there may be an increase in advocacy activity as a consequence of reforms to the Mental Health Act, alongside potential growth in Care Act advocacy, though the proposed introduction of the Liberty Protection Safeguards may reduce advocacy activity for Independent Mental Capacity Advocates (IMCA's). The current funding arrangement—75% via the Better Care Fund and 25% through Department of Health grant funding—helps to mitigate budgetary pressures on the wider Community Wellbeing portfolio.

23. It is proposed that the budget for the new contract should remain unchanged at a cost of £207,070 per annum. The total contract cost for up to 7 years would be £1,455,629.

Legal implications

- 24. The Council's has statutory duties in respect of Mental Capacity Act 2005, Mental Health Act 1983 as amended, Health and Social Care Act 2012 and Care Act 2014
- 25. The contract will need to be procured in accordance with the Procurement Act 2023 and the Council's contract procedure rules.

26. Risk management

27. In mid-October, two significant announcements were made that are likely to impact expectations around certain advocacy provision. Firstly, the government confirmed it will proceed with the introduction of the Liberty Protection Safeguards (LPS). At the same time, the Supreme Court has been hearing arguments challenging the 2014 'Cheshire West' judgement. Additionally, forthcoming reforms to the Mental Health Act are expected to extend the current role of Independent Mental Health Advocates (IMHAs).

- **Cheshire West 'Acid Test'** - The Supreme Court has recently heard arguments on whether to uphold or revise the Cheshire West decision, which established the "acid test" for determining a deprivation of liberty under the Mental Capacity Act 2005. If the Supreme Court overturns the Cheshire West judgment, the definition of deprivation of liberty would narrow significantly, reducing the number of cases requiring authorisation under DoLS or future Liberty Protection Safeguards. This would ease administrative burdens on councils and the NHS but could weaken Article 5 protections for people who lack capacity, as fewer situations would trigger independent checks and advocacy. While the government argues this change aligns with European case law and allows

consideration of wishes and feelings, charities warn it risks leaving some vulnerable individuals without proper safeguards.

- **Liberty Protection Safeguards (LPS)** - In October 2025, the government announced plans to reintroduce the Liberty Protection Safeguards (LPS) as a replacement for the Deprivation of Liberty Safeguards (DoLS). This marks a significant change to the legal framework for protecting individuals who lack capacity, although the full implications for advocacy provision remain uncertain. LPS was designed to create a less burdensome assessment process for determining whether someone is deprived of their liberty, but it would also require Independent Mental Capacity Advocates (IMCAs) to play a more prominent role. The Council will continue to monitor national guidance and developments to ensure that the new service specification and contract remain flexible enough to respond to any changes in statutory duties or demand for advocacy arising from LPS implementation.
- **Mental Health Act Reform** - Changes to the Mental Health Act are unlikely to significantly affect service provision unless the new Code of Practice substantially alters the role of IMHAs. Under the current Code, IMHAs help patients understand their rights, support them at tribunals and hearings, ensure their views are heard, and assist with decision-making. Voluntary and informal patients are not usually involved in these processes, so any increase in activity following the reforms is expected to be manageable.

28. The impact of the Cheshire West judgment will be critical. If it is overturned, far fewer people would be considered deprived of liberty, reducing the number covered by LPS and likely lowering demand for advocacy. If it is upheld, the current numbers would remain, but the expanded role of IMCAs under LPS could increase pressure on advocacy services. Without the new Code of Practice, which will not be published until after a public consultation during 2026, it is not possible to predict the scale of this impact with certainty.

Risk/Area	Description of Risk	Mitigation
Liberty Protection Safeguards (LPS)	The government's decision to reintroduce LPS will change the legal framework for deprivation of liberty. The full impact on advocacy provision, demand, and statutory duties is not yet clear.	Closely monitor national guidance and developments. Ensure the new service specification and contract are flexible enough to adapt to changes in statutory duties or advocacy demand arising from LPS implementation.
Cheshire West Judgment	The Supreme Court is considering whether to uphold or revise the 2014 Cheshire West 'acid test' for deprivation of liberty. A narrower definition could reduce safeguards for vulnerable people and affect advocacy.	Monitor the outcome of the Supreme Court judgment. Be prepared to review and update local policies, procedures, and contracts to ensure compliance and maintain appropriate safeguards, regardless of the decision.
Mental Health Act Reform	Reforms will extend the statutory right to Independent Mental Health Advocate (IMHA) support to all mental health inpatients and introduce opt-out advocacy.	Ensure the service specification reflects the expanded statutory duties and that providers are prepared for changes when they take effect.

	<p>This is likely to increase demand for IMHA services.</p>	<p>Unless there are significant changes made to the MHA Code of Practice regarding roles and responsibilities of IMHAs, the impact of the change will be minimal on the additional numbers seeking advocacy support.</p>
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29. The risks associated with The Procurement of Herefordshire Independent Adult Advocacy Services have been reviewed and are being managed in accordance with HC's Risk Management Strategy. On going oversight through established governance structures will ensure that risks are monitored, escalated and addressed as necessary to support the delivery of services.

Consultees

30. Political Groups Consultation – 15 October 2025

- A meeting was held with council members to review the Adult Independent Advocacy Service in Herefordshire. Key areas discussed included:
- **Service Overview:** Current provision, scope, and contract arrangements, with Onside as the provider until July 2026.
- **Performance and Quality:** Monitoring processes, KPIs, and feedback mechanisms, with agreement to include compliments alongside complaints.
- **Re-Procurement:** Timeline confirmed for tender issue in January, contract award by March/April, and mobilisation thereafter. Market engagement and evaluation criteria tailored to local needs were outlined.
- **Follow-up Actions:** incorporate service user voice in reports, clarify KPIs, and include positive feedback in monitoring.

Appendices

Appendix 1: Equality Impact Assessment

Background papers

None identified