Adult and Community Services

Market Briefing: Independent Advocacy

March 2015

This market briefing is one of a series of briefings as part of the Transforming Adult and Community Services Programme.

The purpose of this briefing is to:

- Encourage and support providers to shape their services to meet the needs of individuals
- Support the personalisation agenda locally
- Share the Council's thinking and future commissioning intentions in relation to independent advocacy

City of Bradford MDC
www.bradford.gov.uk

1. Introduction

This market briefing is designed to stimulate ongoing discussions with providers by sharing the Council's thinking and future commissioning intentions in relation to Independent Advocacy.

Our ambition is to influence and drive the pace of change for the whole market in order to stimulate a sustainable and diverse range of care and support, continuously improve quality and choice, and deliver innovative and cost-effective outcomes that promote the wellbeing of people who need care and support.

However, the scale of change required needs to be recognised. The Council and its partners along with providers and people who use services will all need to work together in different ways if we are to successfully overcome the challenges presented by increasing pressure on public funds and increasing expectations of citizens.

2. Key messages

Bradford has embarked on a programme to transform adult social care. The Care Act, which is driving much of this transformation, presents commissioners and providers with a new set of challenges. At the heart of the Care Act is the duty to promote people's well-being and we consider independent advocacy to have a key role in helping people to achieve the outcomes that matter to them in their life. The following principles will guide our commissioning activity:

- **Personalisation:** We will work towards people having personal budgets and increased choice; providers of services will need to promote and support the personalisation agenda

- **Pressure on funding**: we continue to work in a context of reductions to public services funding while there are increasing needs, particularly among older people, people with a learning disability and people with mental health needs and complex needs

- **E-Market solutions:** we will be developing the Connect to Support e-market place and will expect all providers to register to enable people to access a diverse and high quality range of services

- **Keeping it local:** we want to make sure that people are not placed out of area and that appropriate services are commissioned locally in partnership with our health partners

- **Quality:** we will seek to work with providers who are able to demonstrate their commitment to improving and maintaining high quality services

- **Learning Disability transformation:** we will make sure that services conform with the recommendations from the Winterbourne review and will be looking to identify and engage with specialist local providers

- **Mental Health transformation:** we are working to develop appropriate accommodation to meet the needs of people with mental health problems, in particular those people with high support needs, to avoid unnecessary residential care placements

3. What do we mean by independent advocacy?

Advocacy is defined in the Advocacy Carter as "taking action to help people say what they want, secure their rights, represent their interests and obtain services they need."

Independent Advocacy can offer huge benefits to both service users and service providers. For service users, advocacy can mean having a voice, being enabled to make choices and take control over one's life. For service providers, advocacy provides a useful safeguard and a means of involving people in decisions about their own care and support. Furthermore, advocacy can be an important means of ensuring legal duties and organisational policies are met regarding disability equality and human rights.

Advocacy can reduce dependency on health and social care services, for example a reduction in missed appointments, inappropriate placements and inadequate care packages as well as encouraging innovative solutions to difficult problems. There are many examples of people from a wide range of client groups who express positive views about advocates.

Independent advocacy also supports a number of key Adult Social Care and NHS commissioning functions, for example duties regards reducing inequalities, promoting the involvement of each patient, enabling patient choice. The role of advocacy can also act as an active preventer of abuse and neglect. The Social Care Institute for Excellence (SCIE) have highlighted the need for independent advocacy in numerous abuse enquiries.

4. Demand

Overview of population and demographics

Estimating the number of people who may be eligible to access independent advocacy is far from being a straight-forward task. However, population projections suggest that those groups of people most likely to access independent advocacy are all predicted to increase over the next five years, for example:

- People predicted to have a longstanding health condition caused by a stroke
- People aged 65 and over predicted to have dementia
- People predicted to have a serious mental health problem
- People over 65 predicted to have severe depression
- People predicted to have a moderate or severe learning disability
- People predicted to have a serious physical disability
- People predicted to have autistic spectrum disorders

Changes in demand from provider perspective

- Providers report increased demand for statutory advocacy. Serious medical treatment and accommodation generally being the key reasons for referral

- Although the DOL's supreme court ruling (March 2014) made no legal change to the deprivation of liberty safeguards, its interpretation of the safeguards is significant in terms of determining whether a person is objectively deprived of their liberty. Providers report that the demands on

- Providers report increased demand for non-statutory independent advocacy which supports research conducted by Action for Advocacy showing increased demand for independent non-statutory advocacy

- Reasons suggested included the number of vulnerable people increasing, changes to benefits as a result of welfare reform, increasing debt and financial problems and reforms in health and social care including personalisation

Legislation and policy

Independent Advocacy duty under the Care Act

Local authorities have a duty to involve people in decisions made about them and their care and support. No matter how complex a person's needs, local authorities are required to help people express their wishes and feelings, support them in weighing up their options, and assist them in making their own decisions.

The advocacy duty will apply from the point of first contact with the local authority and at any subsequent stage of the assessment, planning, care review, safeguarding enquiry or safeguarding adult review. If it appears to the authority that a person has care and support needs, then a judgement must be made as to whether that person has substantial difficulty in being involved and if they do, whether there is there an appropriate individual to support them. An independent advocate must be appointed to support and represent the person for the purpose of assisting their involvement if the individual has substantial difficulty and if there is no-one who can support them.

The advocacy duty in the Care Act applies equally to those people whose needs are being jointly accessed by the NHS and the local authority, or where a package of support is planned, commissioned or funded by both a local authority and a clinical commissioning group (CCG), known as a 'joint package' of care. Historically this arrangement has often been difficult for people who use services, their carers and friends to understand and be involved in. Local authorities and clinical commissioning groups should therefore consider the benefits of providing access to independent advice or independent advocacy for those who do not have substantial difficulty and/or those who have an appropriate person to support their involvement.

The Mental Capacity Act 2005

The right to an independent mental capacity advocate was introduced by the Mental Capacity Act 2005. The Act gives some people who lack capacity a right to receive support from an independent mental capacity advocate.

Responsible bodies, the NHS and local authorities all have a duty to make sure that independent mental capacity advocates are available to represent people who lack capacity to make specific decisions, and so any staff affected will need to know when an independent mental capacity advocate needs to be involved.

The Mental Capacity Act Deprivation of Liberty (MCA DOL) safeguards were introduced into the Mental Capacity Act in 2007. The MCA DOL safeguards apply to anyone aged 18 and over who suffers from a mental disorder or disability of the mind (e.g. dementia or a profound learning disability) and who lacks the capacity to give informed consent to the arrangements made for their care and/or treatment and for whom deprivation of liberty is considered after an independent assessment to be necessary in their best interests to protect them from harm. The safeguards cover patients in hospitals, and people in care homes registered under the Care Standards Act 2000, whether placed under public or private arrangements.

The Mental Health Act 2007

Independent mental health advocacy services were introduced to safeguard the rights of people detained under the Mental Health Act 2007 and those on community treatment orders (CTOs). Independent mental health advocates (IMHAs) aim to enable qualifying users to participate in decisions about their care and treatment.

An independent mental health advocate is a statutory advocate, granted specific roles and responsibilities under the Mental Health Act. Their role is to assist qualifying patients understand the legal provisions to which they are subject under the Mental Health Act 1983 and the rights and safeguards to which they are entitled. They also assist qualifying users to exercise their rights by supporting participation in decision-making.

How do these duties interact?

Independent advocacy under the duty imposed by the Care Act 2014 is similar in many respects to independent advocacy under the Mental Capacity Act. Regulations have been designed to enable independent advocates to carry out both roles. However, the duty to provide independent advocacy under the Care Act is broader and applies in a wider set of circumstances, providing support to:

- people who have capacity but have substantial difficulty in being involved in the care and support process
- people in relation to their assessment and/or care and support planning regardless of whether a change of accommodation is being considered for the person
- people in relation to the review of a care and/or support plan
- people in relation to safeguarding processes (though independent mental capacity advocates may be involved if the authority has exercised its discretionary power under the Mental Capacity Act)
- carers who have substantial difficulty in engaging, whether or not they have capacity
- people whohave someone who is appropriate to consult for the purpose of best interests decisions under the Mental Capacity Act, but where that person is not able or willing to assist with advocacy in any other capacity.

There are likely to be people who qualify for advocacy under the Care Act but not for an independent mental capacity advocate. However, most people who qualify for independent advocacy under the Mental Capacity Act will also qualify for independent advocacy under the Care Act. To enable a person to receive seamless advocacy and not to have to repeat their story to different advocates, the same person can provide support in both roles, provided they are trained and qualified to do so.

If someone has previously had access to an IMHA and is being jointly assessed by the NHS and local authority (often under what is called a Care Programme Approach), they should be considered for an advocate under the Care Act, if they have substantial difficulty in being involved and if there is no appropriate person to support their involvement.

The Care Act extends the range of situations and people to whom there is a duty to make advocacy available. Nothing in the Act prevents advocacy being provided in other circumstances.

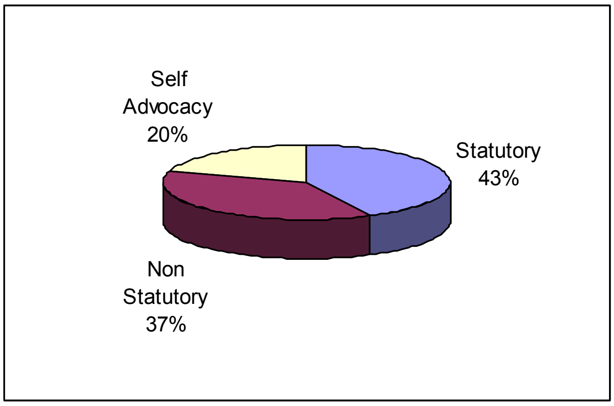
The draft statutory guidance accompanying the Care Act recognises that often a person will be entitled to an independent advocate under the Care Act and then, as the process continues, it may be identified that there is a duty to provide an independent advocate under the Mental Capacity Act.

The draft guidance makes it clear that although local authorities do not have to commission one organisation to provide both types of advocacy, there may be advantages in doing so, for example:

- It is better for the person receiving the support
- It is easier for those carrying out assessment and care planning to work with one advocate per individual rather than two
- It is easier for the local authority to manage and monitor one contract rather than two

5. Supply

Overview of funding



Adult and Community Services currently have agreements with three local organisations to provide statutory and non-statutory independent advocacy. The total value of the investment in 2014/2015 is £356,160. The investment can be broken down by statutory (53.4%) and non-statutory (46.6%) independent advocacy. A further £89,905.00 is invested to support two self advocacy groups in the district giving a total investment in independent advocacy provision of £446,065.00.

In addition, the local NHS, via its third sector funding, has also provided grants totaling £125,165.00 in 2014/2015 to support independent advocacy.

Overview of current market

- Current providers are all local to the district and have emerged to meet specific client-group needs, in particular learning disability and mental health – a strength of this arrangement is that independent advocacy providers tend to be closer to the needs of individuals and local communities and find it easier to maintain independence from statutory services

- However, due mainly to the historic nature of the funding, some groups of people fall through gaps in provision, for example people with autism, people with dual sensory loss, people with acquired head injury. In addition, providers face capacity and sustainability issues which can mitigate against effective collaboration and networking

- Current providers are all independent of both the local authority and the NHS and although most of the funding comes through these routes, providers have been successful at securing other funding streams

- Current providers are a mix of user-led organisations and providers run by management committees that include people who use services

- There are approximately 13 full-time equivalent paid advocates (approx 500 hours per week) proving statutory and non-statutory advocacy

6. Reviewing the evidence and delivering the change

Reviewing the evidence

Statutory duties

The Care Act introduces new rights to independent advocacy for individuals where the LA considers they have substantial difficulty in engaging with the care and support process and where there is no appropriate person who can facilitate their involvement. The Mental Capacity Act and Mental Health Act also place duties upon the LA to ensure IMCA's and IMHA's are available. The role of non-statutory advocacy has a crucial role in terms of prevention an promoting well-being.

Commissioning

Independent advocacy provision in the Bradford District has developed through a history of funding arrangements which have been extended and sustained to the present day. There is no single service specification for independent advocacy and current funding arrangements are not based on a clear and agreed model of advocacy provision which has led to variation between providers

Current Providers

Current providers are all local to the district and have emerged to meet specific client-group needs, in particular learning disability and mental health. A strength of this arrangement is that independent advocacy providers tend to be closer to the needs of individuals and local communities and find it easier to maintain independence from statutory services. However, due mainly to the historic nature of the funding, some groups of people fall through gaps in provision, for example people with autism, people with dual sensory loss, people with acquired head injury. In addition, providers face capacity and sustainability issues which can mitigate against effective collaboration and networking.

Demand

Based on both provider feedback and the growth in the groups of people most likely to access independent advocacy, we can confidently predict an increase in future demand for independent advocacy. However, estimating the potential demand under the Care Act poses a significant challenge as the current system does not provide sufficient insight into the levels of need which will come into scope under the new legislation.

Population projection tools such as POPPI and PANSI do suggest that the populations who are most likely to qualify for independent advocacy under the Care Act are all increasing. The Care Act impact assessment suggests nationally an expected 32,300 likely recipients of independent advocacy and additional costs of £14.5m. These estimates increase significantly from 2016/2017.

We are already seeing a dramatic increase in the number of DOLs authorisations of around 12 times the number received in the same period in the previous year.

Delivering the change

What is clear is that the Local Authority and the CCG's need to enter a new era of commissioning independent advocacy which is based on a clear strategy and agreed outcomes that are able to influence the local market for advocacy to develop services in line with local needs, rather than the historical awarding of contracts.

Through the first quarter of 2015/2016 the Local Authority and the CCGs are committed to working with independent advocacy providers and people who use advocacy services to:

- Bring together and analyse relevant data on activity, finance and outcomes of all forms of independent advocacy

- Develop effective strategies and plans to ensure staff, people who use services and their carers are aware of and understand the role and function of independent advocacy

- Co-produce an effective model of independent advocacy in line with duties under the various acts including how different forms of independent advocacy (e.g. self advocacy, volunteer advocacy, citizen advocacy etc) support the well-being principle

- Facilitate ongoing dialogue with key stakeholders in order to build a consensus on the implications of the proposed model

During 2015/2016 there will be a procurement process to ensure there is an independent advocacy service in place from April 2016 which is able to provide a high quality response to the advocacy needs of citizens in the district.

The independence of the service will be an important consideration. For independent advocacy services to be meaningful and acceptable to those they are designed to support they must have the confidence of individuals, carers and the public. Anything compromising that independence could easily undermine confidence. The Care Act regulations for independent advocacy are clear in that providers of advocacy must be independent of the local authority, with their own constitution, code of practice and complaints procedure. Advocates under the Care Act will be managed by, and primarily accountable to, the advocacy organisation that recruits and employs them, thereby maintaining their independence from the local authority.

Independent Advocacy services providers will be required to demonstrate that their services are provided within national advocacy quality standards, for example the Quality Performance Mark (QPM).

We welcome views on what kind of market information would be especially useful in the future or might be difficult to obtain independently as well as your views on the type of engagement you feel will be most useful to you.

The Council is interested in hearing from you if you have any questions or comments about this document and with your ideas about how we could improve it in future years.

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