

**MEETING****CABINET RESOURCES COMMITTEE****DATE AND TIME****MONDAY 24TH JUNE, 2013****AT 8.00 PM****VENUE****HENDON TOWN HALL, THE BURROUGHS, NW4 4BG**

Dear Councillors,

Please find enclosed additional papers relating to the following items for the above mentioned meeting which were not available at the time of collation of the agenda.

Item No	Title of Report	Pages
4.	PUBLIC QUESTIONS AND ANSWERS	1 - 10

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**Item 7: OUTTURN AND PERFORMANCE REPORT****Questions from Mr John Dix**

- 1. At paragraph 1.14 the report states that the spend so far on the One Barnet Implementation partner to the end of April is £7.138 million yet the suppliers payments list suggest the spend is only £6.555m. Does this mean that almost £600,000 of invoices have withheld from the supplier payments system list and if so why?**
  - 2. At appendix G Corporate risk register it notes a risk of “Failure to engage properly with Residents” has a moderate impact and a possible probability which you suggest will reduce to an unlikely probability. Given that the failure to engage with residents has led to the judicial review do you think that this rating is somewhat over optimistic?**
1. The figure of £7.1m includes spend from the start of the Agilisys contract (2010) through to the end of 2012/13. The £500 reports on the Council's website are currently for 2011/12, 2012/13 and 2013/14. Approximately £600k of the spend on the Agilisys contract was in the 2010/11 financial year, which accounts for the difference between the two figures.
  2. The risk register includes a range of risks ranging from concerns around continuation of service delivery and future government funding cuts impacting on the Council's financial position, and the rating of these risks reflects the probability and impact of these range of risks.

**Questions from Mrs Barbara Jacobson**

**1.11 The virement of £0.305m re Electoral Registration from NSCSO to the Assurance Directorate. (Paragraph 9.15.1): Since this virement is coming up for approval now, it couldn't have been included in the NSCSO contract with Capita, so how does it affect that proposed contract?**

Electoral registrations was originally part of the NSCSO contract with Capita, it is now not included within the scope.

**1.14 While we may note the spend of £7.183m on Agilisys / Impower, how do you explain that it is more than three times the original estimate of £2m?**

- **How much has been paid to Agilisys / Impower since the end of April 2013?**

- **How much will continue to be paid to Agilisys / Impower in the coming months?**
- **And exactly, precisely, specifically what are they doing for this money?**

Agilisys/Impower have been employed to support a range of projects alongside the Council and the scope of this has been extended significantly since they were originally contracted in 2010.

Agilisys/Impower were paid £240k in May 2013.

We will update the Cabinet Resources Committee on spend in respect of Agilisys/Impower over the forthcoming months.

### **9.1.3 'a shortfall in income in Legal Services':**

- **What was the amount of this shortfall?**
- **Why was there a shortfall?**
- **Does the shortfall indicate that the assumptions on which the generation of income are based are flawed?**
- **What is being done to try to ensure there is no shortfall in the next financial year?**

The overall shortfall in income was approximately £49k. £26k of this related to Barnet Homes, where the actual work carried out in respect of Barnet Homes and billed to them was lower than the amount originally budgeted. Work has been undertaken as part of setting the 2013/14 to ensure that the assumptions made for Barnet Homes legal work are robust. The remainder is mainly due to a shortfall in court costs. This income varies year on year dependent on court activity and it is not always possible to estimate this income completely accurately, but the estimate is based on historical trend data.

### **9.1.4 'underspends ... in the Children's Services (£0.838m) ... is primarily due to vacancies, reduced staffing costs and planned savings for 2013/14 being achieved early'. How were the staffing costs reduced, and what is the amount of money thus saved? What monitoring and safeguards have there been to ensure that reducing costs in this way and by leaving vacancies unfilled has not had any negative affect on the quality of services delivered?**

The underspend in the Children's Service was achieved in part, as set out above, by holding vacancies within the service. It was also achieved by the early achievement of savings on transport related costs.

The quality of services delivered is monitored regularly by the Council in response to its statutory obligations, and the performance indicators in respect of Children's

Services are also included within quarterly monitoring reports to ensure that service quality is monitored alongside the financial information.

### **9.3.2 'In Adult Social Care and Health, over 56% of service users felt they have choice and control influencing decisions that affect them meeting the target in quarter 4.'**

#### **• How many service users are there?**

During 2012/13 Adult Social Care and Health provided support to 13222 people- 5459 people were dealt with at the point of contact and 7763 received a care management service. As at 31 March 2013, 5341 service users were being supported through Barnet Council's care management service.

Surveys are sent to service users who have had direct contact with us in that quarter. In 2012/13 255 were returned, of these 145 reported that they had choice and control influencing decisions that affect them.

#### **Surveys**

#### **• Why was the target set at 56%?**

The information for this performance indicator is based on a survey developed by Adult Social Care and Health which asks a sample of service users each quarter for their views on their experience of Adult Social Care in Barnet. This type of local intelligence is not captured in any of the National Surveys that relate to Adult Social Care. Therefore, a pilot survey was carried out in Q4 of 2011/12 to establish a baseline, this baseline was 54.5% and a subsequent target of 56% was set.

#### **• What is being done about the fact that 44% of service users don't feel they have choice and control influencing decisions that affect them?**

In relation to those who responded to the survey a sample of respondents were followed up by telephone to establish exact reasons for dissatisfaction, an action plan was put in place for any issues identified.

Within Adult Social Care work is ongoing with both service users and carers to increase the level of choice and control they have throughout the planning and decision making process. This is supported by the recent introduction of further multi-disciplinary working aligned to changes to organisational structures, processes and strategies within the Council and our partners.

There is a focus on user-led community development work, encouraging and supporting people to participate in the wider community in order to help promote independence. This includes new projects around community focused information and advice initiatives supported and run by the local volunteers as well as further support around later life planning.

Information and Advice and Advocacy and Peer Support Brokerage is also available through the Barnet Centre for Independent Living which provides support to enable choice and control and provides an alternative for service users in relation to who they work with to develop their support plan. In 2012/13 2536 people benefitted (total enquiries – information, advice, advocacy & brokerage) from the services provided by BCIL.

**9.11.1 What exactly were the ‘teething problems with the new contracts’, how did they cause or contribute to the slippage, and what was the slippage and in what works?**

Barnet Homes undertook a significant procurement and mobilisation project which saw 10 new contracts go live in April 2012. It is not uncommon that this scale of activity requires some months to reach full operational capacity. At the go live of each contract priority was given to ensuring that revenue type works of a servicing, testing and delivery of day to day repairs, these being the items which have greatest impact on residents and maintaining satisfaction. Some elements of the planned capital works were therefore delayed until later in the financial year or into the following year.

**9.12.1 Table 14 shows bad debt is £28.905m. Why do these debts arise, what steps have been taken to collect the debt, and why have those steps failed?**

These debts arise for a number of reasons. Adults social care debt is primarily in respect of social care services provided to residents who are assessed as needing to fund their own care costs. Environment, Planning and Regulation debts are primarily in respect of parking charges, for example where a ticket has been issued but it has either been issued in error or has been successfully appealed. Collection Fund debt is in respect of Council Tax. The Council will take all necessary steps to recover debt and will only write off debts where all avenues for collection have been exhausted.

**9.18.3 ‘The overall costs to deliver the projects contained within Wave 1 are projected to be £1.734m above the original budget.’ Are you saying that the first budget for ‘costs to deliver the projects’ was set in October 2012?**

**• If not, what was the date of the original budget and what was the figure in that budget for these costs?**

9.18.1 and 9.18.2 answers the question.

**9.18.4 What accounts for the projection of higher savings of £53m, e.g. were the initial projections wrong or have other ways been found to make savings and, if so, what are they?**

The additional savings noted in the report are as a result of the final bids in respect of DRS and NSCSO being better than the projections in the original business cases. The business cases took a prudent view of the opportunity for additional income

and/or cost savings resulting from the procurements, and the final bids set out a greater financial benefit.

**9.18.8 What would have been the approximate cost of the consultation required by law, which the Council failed to undertake?**

The Council has fulfilled its requirement to consult in line with legislative requirements.

**9.18.9 Why is this information repeated at 9.18.15?**

9.18.9 explains the position, and 9.18.15 recommends the funding source to Cabinet.

**ITEM 9: HENDON FOOTBALL CLUB**

**Questions from Mr David Hersh**

**Question 1: In reaching their decision about which bid was the highest, was the school's latest increased bid submitted in June, taken into account.**

Answer 1 : Full and final offers were requested from both parties and consequently the Council is not obliged to take the late bid made on 13 June into consideration as it is outside of the process. However we did ask the Independent Valuer to consider whether the late bid makes any difference to the outcome of the recommendation to the Committee and his advice on the matter has not changed.

**Question 2: If not, why not, bearing in mind the ruling handed down by Justice Mitting in February 2013, and I quote:**

***I cannot of course exclude the possibility that the claimant or for that matter a third party may at the eleventh hour come up with a bid that trumps that of MontClare. If that happens then in the fulfilment of its duty under Section 123 Barnet will have to give proper consideration to the bid.***

Answer 2: Please see the Answer to Question 1. We would add that Lord Justice Mitting ruled "*that on the facts of the case, the Council's decision in relation to its Section 123 duty was unquestionably lawful and the Council will be in breach of its duty not to sell to Montclare*".

**Question 3: Why does the council not consider the provision of land for local schools important enough to make sure that a sale is made to the school even at a lower price if need be, under the Local Government Act 1972: General Disposal Consent 2003, which allows the council to do so as long as the sum offered is within £2m of the highest bid.**

Answer Q3 The Council does consider the provision of land for local schools important and in fact have sold or are currently selling sites for exactly that purpose. In any event these sales were on the basis of best consideration and I should point out solely for education use. The proposals for the HFC site are primarily for residential and we have therefore used best consideration approach.

**Question 4: Why has Councillor Thomas refused me permission to speak at the CRC meeting on 24th June 2013?**

Answer Q4: The factual information relating to both bids in the public and exempt reports is sufficient for the Committee to make a decision on this matter. Both bids have been subject to independent evaluations and members of the Committee are aware of these. At a previous meeting of this Committee, where the decision to sell on this basis was made, a number of representations were made on the school's behalf. The school has therefore had the opportunity to address Committee on their proposals on previous occasions. Further oral representation from either bidder is not required for the Committee to make a decision.

**AGENDA ITEM 15: CATALYST CONTRACT RENEGOTIATION – THE FUTURE ROLE OF FREMANTLE TRUST IN CARE PROVISION**

**Questions from Mrs Barbara Jacobson**

**Ref 2.11, 2.12 - What was the final cost of legal services for this arbitration and what was the financial outcome (i.e. how much money was paid to whom)?**

As reported to CRC on 2 March 2011 the costs in terms of the arbitration were:

Final Award to Catalyst (incl interest and costs)	£8.674m
Council's final (estimated) legal costs	£2.000m
Outstanding issues (land swaps)	£0.110m
Total cost	£10.784m

**Ref 4.4 - Since anyone using a care home for themselves or their loved ones would like to be certain of the health and safety procedures of such an organization, and especially an organisation previously found to be seriously deficient in these respects, why are the details about Fremantle's assurances 'exempt' from public scrutiny?**

This information constitutes business information held by the Fremantle Trust. It was withheld at the request of Trust as it may be utilised by their legal team during the forthcoming court case and they do not want to prejudice that case.



#### **Ref 4.5 - What is the range of 'a reasonable timescale'?**

A reasonable timetable would be determined by both parties subject to the offer being accepted by the Council and Fremantle. 'Reasonable' would include consideration of realistic timescales for implementation of the offer details, subject to legal or procedural requirements and ensuring continuity of care and support for Fremantle residents and service users. We would expect to conclude this by 31<sup>st</sup> December 2013.

#### **Ref 6.8 - Why is it seen as a good thing to reduce the number of 'public' beds in order to increase the number of private beds at a time when the council acknowledges a growing ageing population?**

The revised proposal reduces the number of residential beds purchased by the Council under a block arrangement with Fremantle. It does not reduce the number of residential care beds available to Barnet residents who are eligible for public funding of their social care needs. A block arrangement means that the Council buys the same number of beds, whether or not service users choose to use them. Whilst many people will continue to choose a Fremantle home, reducing what the Council spends on block purchasing arrangements means that the Council can offer more choice from the wide range of residential care homes in Barnet.

#### **Questions From Ms Tirsa Waisel**

**Item 15, paragraph 1 (p. 235) - Recommendations, and to 4.4 (p. 238) – within Risk Management Issues.**

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**Does the 'incident at Dellfield Court' refer to the death of the service user, as reported in Barnet & Whetstone Press 18 June 2013?**

Yes

**Can you clarify who is correct – your report that says 'Both the Police and the Health and Safety Executive decided not to prosecute' [my highlighting] or the reporter Daniel O'Brien: '...the case to be heard at Willesden Magistrates' Court on June 25. ' - i.e. tomorrow?**

The CPS decided not to prosecute following a manslaughter investigation. The matter was then submitted to Barnet Council, as the health and safety enforcement authority for privately run care homes. Health and safety enforcement is split between the HSE and local authorities based on the type of operation. Barnet Council Environmental Health investigated this matter and commenced the prosecution. The matter is due to be heard on 9 July 2013 at Willesden Magistrates Court, having been adjourned from 25 June at the request of the Defendant.

**How do you explain your definition of the risk as per your report, only as 'a risk of adverse publicity'? Can you identify any further risks following this "incidental" death? Perhaps, for example, a risk to the health and safety, not to say to the life of Barnet residents who use Fremantle facilities?**

The risk of adverse publicity refers specifically to the ongoing court case. At no point has the Council referred to the tragic death of this lady as "incidental". Council officers supported the police in their preliminary investigation and following the decision of the CPS, took over responsibility for the investigation, which led to criminal proceedings being commenced. The criminal case relates to alleged historic failures in relation to health and safety responsibilities.

The Fremantle Trust has reviewed its policies and procedures as a result of the investigation and the Council is not aware of an ongoing health and safety risk. However, in view of the serious consequences of the alleged breaches, it was felt in the public interest to prosecute.

**How does Barnet council propose to implement its duty of care towards its vulnerable residents who need care homes in light of this "incident" and the "incident" of the Legionella bacteria found in the water resources of care homes managed by the same Fremantle not long ago?**

All providers of care homes who employ staff have duties under the Health and Safety at Work etc. Act 1974. By both working with operators and in appropriate circumstances taking enforcement action in the event of failings, the importance of compliance with such legislation is highlighted to ensure that it is given a high priority and best practice is followed. In particular, there is guidance and advice on compliance with health and safety legislation for care home providers on the HSE website.

Regarding Legionella, the new service provider will be required to ensure the safety of those who use the buildings in respect of Legionnaire's Disease by complying with The Approved Code of Practice and Guidance L8 (Legionnaire's Disease – The Control of Legionella Bacteria in Water Systems) as published on behalf of the HSE .

The local authority as a commissioner of care has a comprehensive approach to quality assurance in care homes as part of its contracting mechanisms. These were described in a report to Safeguarding Overview and Scrutiny Committee in July

2012. The local authority includes safeguarding standards in its contracts, undertakes performance and contract monitoring with its providers, reviews CQC inspection reports, carries out regular information sharing with CQC and about concerns and has a process for suspending placements in homes if there are serious quality concerns. The council has recently established a new Quality in Care homes teams which will do improvement work and provide support for all care homes in the borough. Jointly with Barnet CCG, the council has established an integrated project working with care homes to improve the quality of care provided in care homes.

**Were there any casualties caused by the Legionella “incident”? Was any resident infected by Legionnaires' Disease and if there were – did all survive it?**

No resident contracted the disease.

**What was the outcome of the Notice of Improvement served on Fremantle by LBB?**

We believe this may refer to a Notice served by the Care Quality Commission in 2010 as the Council has not served the Notice referred to. We are informed by Fremantle that Notice was served by CQC requiring Fremantle to improve the quality of record keeping in respect of medication at one of its care homes. This was rectified; CQC then re-inspected and removed the Notice.

**Whose responsibility is it to keep the H&S in Fremantle homes, or for that matter, in any outsourced social care facilities?**

Health and safety responsibilities for organisations that employ staff or contractors are set out in the Health and Safety at Work etc. Act 1974 and associated regulations. The responsibilities relate to both staff and members of the public who use the service. The Fremantle Trust have responsibility for health and safety matters relating to its own organisation. The Council monitors a wide range of quality matters as part of its contracting arrangements which includes consideration of an organisation's management of health and safety.

**Please explain to us how come you even consider renewing this outsourcing contract with an organisation who had proved in deeds more than once that it puts Barnet residents in a very real risk?**

The current enforcement action relates to alleged historic failings in relation to health and safety. All organisations are expected to record accidents and health and safety issues to ensure that gaps in processes and possible improvements are identified to prevent similar incidents happening in the future. Review and monitoring of compliance by an organisation is an essential part of compliance with health and safety legislation. The Fremantle Trust reviewed its policies and procedures following the tragic death in 2011 and made changes to its systems as a result. In

forming this recommendation, the council has undertaken due diligence of the actions Fremantle have taken in respect of health and safety following the incident, Fremantle's health and safety record, service quality, safeguarding and user/carer satisfaction in respect of Fremantle.