

DELEGATED POWERS REPORT NO.

2056

SUBJECT: Capsticks Solicitors Acting on Behalf of Barnet regarding Haperbury Hospital Clients

Control sheet

All of the following actions MUST be completed at each stage of the process and the signed and dated report MUST be passed to the Governance Service for publishing

All reports		
1. Governance Service receive draft report	Name of GSO Date	Andrew Charlwood 11/06/2013
2. Governance Service cleared draft report as being constitutionally appropriate	Name of GSO Date	Andrew Charlwood 13/06/2013
3. Finance clearance obtained (<i>report author to complete</i>)	Name of Fin. officer Date	Farhana Begum 18/06/2013
4. Staff and other resources issues clearance obtained (<i>report author to complete</i>)	Name of Res. officer Date	N/A
5. Strategic Procurement clearance obtained (<i>report author to complete</i>)	Name of SPO Date	Meeks, Lesley 01/07/13
6. Legal clearance obtained from (<i>report author to complete</i>)	Name of Legal officer Date	Michael Adam 19/06/2013
7. Policy & Partnerships clearance obtained (<i>report author to complete</i>)	Name of P&P officer Date	Andrew Nathan 19/06/2013
8. Equalities & Diversity clearance obtained (<i>report author to complete</i>)	Name of officer Date	Andrew Nathan 19/06/2013
9. The above process has been checked and verified by Director, Head of Service or Deputy	Name Date	Karen Jackson 17/07/2013
10. Signed & dated report, <u>scanned or hard copy</u> received by Governance Service for publishing	Name of GSO Date	Andrew Charlwood 19/07/2013
11. Report published by Governance Service to website	Name of GSO Date	Andrew Charlwood 19/07/2013
12. Head of Service informed report is published	Name of GSO Date	Andrew Charlwood 19/07/2013
13. Expiry of call-in period	Date	N/A
14. Report circulated for call-in purposes to Business Management OSC members & copied to Cabinet Members & Head of Service	Name of GSO Date	

ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER (COUNCIL FUNCTION)

Subject **Capsticks Solicitors Acting on Behalf of Barnet regarding Haperbury Hospital Clients**

Officer taking decision Assistant Director Adult Social Care

Date of decision 1 April 2013

Summary

In April 2010, the Council entered into a Section 75 Agreement with NHS Barnet Primary Care Trust, (now NHS Barnet Clinical Commissioning Group) for the creation of a pooled budget for the care and support of ten long-term, Barnet placements residing at Harperbury Hospital Campus run and provided by the Hertfordshire Partnerships NHS Foundation Trust.

As a result of the Section 75 Agreement, the Council became lead commissioner for the 10 Campus patients and took on responsibility for the commissioning of services at Harperbury Hospital and planning for their discharge into other community settings for this cohort of service users.

In Summer 2011, Mackintosh Duncan Solicitors, acting on behalf of 6 of the Barnet placements took out Court of Protection proceedings culminating in the Council entering a Consent Order in respect of the 6 individuals. Barnet Legal Services outsourced the legal aspects of this work to Capsticks Solicitors LLP to act on behalf of Barnet. This delegated powers report is concerned with ensuring that Capsticks Solicitors continues to be paid for legal services offered.

Officer Contributors Temmy Fasegha

Status (public or exempt) Public

Wards affected All

Enclosures None

Contact for further information:

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2841

Serial No. 2056

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1. RELEVANT PREVIOUS DECISIONS

- 1.1 The Cabinet Resources Committee, 3 April 2008 (Decision item 12) – approved the entering into a Legal Agreement based on the agreed Heads of Terms with Barnet PCT to enable the section 256 agreement in respect of learning disability services to be implemented
- 1.2 Delegated Powers Report 1038, Transfer of Responsibilities and Resources for People with Learning Disabilities from NHS Barnet, Decision of the Cabinet Member for Adults, 25 March 2010 – agreed to the Council entering into a the Council enters into a section 75 pooled budget arrangement with Barnet PCT from 1 April 2010 for the individuals residing at Harperbury Hospital Campus.

2. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 2.1 Government policies and guidance including; Valuing People¹, 'Our Health, Our Care, Our Say'², Valuing People Now³, 'A Vision for Adult Social Care: Capable Communities and Active Citizens'⁴ and the recent NHS White Paper⁵, call for greater coordination across health and social care to ensure that the needs of people with learning disabilities (pwld) and their carers are addressed.
- 2.2 In exercising their respective functions, the Council and Primary Care Trust- PCT (now Clinical Commissioning Group- CCG) are required, under Section 82 of the NHS ACT 2006, to co-operate to secure and advance the health and welfare of the local population
- 2.3 The aims of the Section 75 Agreement are also consistent with the Council's priority as set out in the 2013-2016 Corporate Plan, "Support families and individuals that need it – promoting independence, learning and well-being" by supporting vulnerable adults to live independent, active lives by ensuring high quality services are available, offering choice and flexibility.

3. RISK MANAGEMENT ISSUES

- 3.1 Since the start of the Section 75 Agreement, two people have been successfully resettled in other more independent community-based service. The remaining eight continue to reside in Harperbury Hospital; two of who are under a Mental Health Act section, the remainder are subject of a Court of Protection Consent Order following the Court of Protection proceedings to determine whether it is in the best interests to reprovide for the client resident in the Specialist Residential Services at Harperbury.
- 3.2 The Court of Protection proceedings was initiated by Mackintosh Duncan Solicitors against all placing authorities in summer 2011. Where residents have family and/or

¹ Valuing People- DH 2001

² Our Health, Our Care, Our Say- DH 2006

³ Valuing People Now- DH 2009

⁴ Vision for Adult Social Care: Capable Communities and Active Citizens- DH 2010

⁵ Equity and excellence: Liberating the NHS- DH 2010

are befriended they were represented by Mackintosh Duncan Solicitors, the Official Solicitor and were listed as a litigant friend. Where a resident is not befriended they are represented wholly by the Official Solicitor.

- 3.3 Barnet Legal Services outsourced legal services in respect of the six Barnet clients in Harperbury Hospital currently subject of the Court of Protection Consent Orders to Capsticks Solicitors LLP, as a specialist in public health and social care. Services are provided by Capsticks under the direction of officers in Barnet Legal Services and the Adults and Communities Delivery Unit.

4. EQUALITIES AND DIVERSITY ISSUES

- 4.1 People with learning disability are one of the most marginalised groups in respect to accessing services and poor health and care outcomes. The Specialist Residential Service is expected to provide support to the long-term Campus clients with a view to preparing them to move on into more community settings.

5. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

Procurement

- 5.1 The S75 Agreement confers on the Council, lead commissioning responsibility and sets out the overall pooled fund including the contributions of both partners over the term of the Agreement and conditions for the management, mitigation and reporting of risks to the budget. The Pooled Budget is managed by the Joint Commissioner for Learning Disability and is for the life-time care and support of the ten Barnet Campus clients at Harperbury Hospital and wherever they are moved to.
- 5.2 Barnet Legal Services outsourced legal services in respect of the six Barnet clients in Harperbury Hospital who are currently subject of a Court of Protection Consent Orders to Capsticks Solicitors LLP, as a specialist in public health and social care. Services are provided by Capsticks under the direction of officers in Barnet Legal Services and the Adults and Communities Delivery Unit.
- 5.3 Given the nature of the work involved and as is customary with legal representation and advice, there is no formal contract between the Council and Capsticks, and work carried out by Capsticks is billed on an ad hoc basis when need arises. As a result, there is a need to waiver the requirement of a formal contract between both parties to ensure that Capsticks continues to provide the necessary advice when needed and is paid for the services provided.
- 5.4 Continuity of provision is needed to ensure the council is not unnecessarily exposed to any risk with regards to on-going legal requirements for this case and these residents. Therefore a single source approach is being recommended at this time.
- 5.5 The council has an established relationship with Capsticks Solicitors LLP since 2011, with specific approval from the Legal department. Payments will be made in accordance with usual contract management procedures and subject to provision of information to verify that the work has been undertaken.

Finance

- 5.6 Payment for the work undertaken by Capsticks LLP on behalf of the Council is from the Adults and Communities learning disability placement budget. To date approximately £17,000 has been paid to Capsticks for legal work undertaken in respect of the six Barnet clients in Harperbury Hospital who are subject of the Court of Protection Consent Orders. Invoices totalling £1,200 for work undertaken in the previous years still remain unpaid and require a delegated powers report to enable processing in line with the Council's new procurement rules.
- 5.8 The nature of the services provided by Capsticks is ad hoc in response to specific queries from the Official Solicitors and under the direction of Council officers. As a result it is difficult to place an annual value of the work to be undertaken. However, based on historical payments, it is not expected to exceed £25k in 2013/14 and £25k in 2014/15.
- 5.9 Consideration is being given about bringing the legal work in respect of the 6 Barnet residents in-house in order to manage costs, if there is a risk to the budgeted amount which is being funded from the Council's placement budget. In particular, as the Community Learning Disability Service is currently planning to explore move on options for all the Barnet placements in Harperbury Hospital.

6. LEGAL ISSUES

- 6.1 No legal issues identified

7. CONSTITUTIONAL POWERS

- 7.1 Council Constitution, Responsibility for Functions, Section 7 details the powers delegated to officers and provides that Chief Officers can take decisions without consultation with the Cabinet Member concerned where it is a decision authorised to be taken by the Chief Officer in accordance with the Contract Procedure Rules.
- 7.2 Council Constitution, Contract Procedure Rules – Table 1, Appendix A details the procurement method for contracts up to £25,000. The procurement method in this instance is reasonable means of selection and acceptance is via a DPR.

8. BACKGROUND INFORMATION

- 8.1 Following the Valuing People Now Consultation paper in 2007, the Department of Health required that the commissioning and funding of social care for adults with learning disabilities be transferred from the NHS to local authorities. Funding for specialist healthcare, forensic services and continuing healthcare remain the responsibility of NHS Barnet.
- 8.2 In this context, NHS Barnet and the Council entered into a section 75 Agreement for a pooled budget to manage the resettlement and care for ten long term Barnet clients with learning disabilities from Harperbury Hospital Campus to alternative

services in the community as part of the campus closure programme that was mandated by the Department of Health

- 8.3 In summer 2011, Mackintosh Duncan Solicitors acting on behalf of some of the clients in Harperbury Hospital campus began Court of Protection proceedings to determine whether it is in the best interests to reprovide for the client resident in the SRS at Harperbury. Where residents have family and/or are befriended they were represented by the Official Solicitor and were listed as a litigant friend. Where a resident is not befriended they are represented wholly by the Official Solicitor. Residents that were detained under section under the Mental Health Act are not part of the court action thus far.
- 8.4 Barnet currently has eight residents within the SRS. Six of whom are subject of Court of Protection Consent Orders entered into in August 2011. The remaining two have been detained under Section 3 of Mental Health Act and are not part of the Court of Protection Consent Orders. One client has family representation and they have been listed as their litigant friend. Other local authorities with clients included in the court proceedings were Hertfordshire, Westminster, Hammersmith & Fulham and Hounslow.
- 8.5 Following initial enquiries prior to the court action by Mackintosh Duncan, the Council's Legal Services agreed to Capsticks providing representation to the court and responses to Mackintosh Duncan, subject to liaison and sign off with Barnet's legal department. There is a named lawyer and legal representative from Capsticks that is acting on behalf of Barnet in respect of the court of proceedings.
- 8.6 It was also agreed by the then Assistant Director of Social Services that payment of the work undertaken by Capsticks on behalf of Barnet will come from the Learning Disability budget, Cost Centre 10468.
- 8.7 The integrated health and social care Barnet Community Learning Disability Service (CLDS), formed following the Section 75 Agreement entered into by the Council and CCG in February 2012 has primary responsibility for coordinating and reviewing the eight Barnet clients in Harperbury Hospital. NHS continuing health care packages in respect to four clients are undertaken by the NHS Barnet Clinical Commissioning Group.

9. LIST OF BACKGROUND PAPERS

- 9.1 Section 75 Agreement- Lead Commissioning for Learning Disability Services for 10 Service Users Subject to the Campus Reprovision Programme.
- 9.2 Delegated Powers Report 1038, Transfer of Responsibilities and Resources for People with Learning Disabilities from NHS Barnet, Decision of the Cabinet Member for Adults, 25 March 2010 –
<http://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=141>

10. OFFICER'S DECISION

I authorise the following action:

- 10.1 That Capsticks Solicitors LLP continues to be paid for work undertaken on behalf of the London Borough of Barnet placements in Harperbury Hospital including the payment of the outstanding payments in respect of 2012/13.**

Signed

Karen Jackson

Assistant Director Adult Social Care

Date

17 July 2013
