

	<p>Policy & Resources Committee Meeting 24th March 2015</p>
<p>Title</p>	<p>Authorisation for Waiver of Contract Procedure Rules - Best Interest Assessor and Mental Health Assessor Service</p>
<p>Report of</p>	<p>Mathew Kendall, Director of Adults and Communities</p>
<p>Wards</p>	<p>All</p>
<p>Status</p>	<p>Public</p>
<p>Enclosures</p>	<p>None</p>
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<p>Summary</p>
<p>This report requests authority to continue to utilise existing independent Mental Health (MHA) and Best Interest Assessors (BIA), bring on board new independent Assessors until a procurement exercise is completed.</p> <p>Authorisation is also sought to utilise other agencies such as Sanctuary Social Care to provide Best Interest Assessors as well as varying the IMCA contract with Enfield & Haringey Local Authorities.</p> <p>All the above measures are required as a result of a Supreme Court Judgement in March 2014 which widened the definition of Deprivation of Liberty Safeguards (DOLS). Barnet previously received 50 requests for assessments per year, and this has now increased as a result of the judgement. It is estimated that the Council will receive 600 assessments by the end of this year.</p> <p>This report also requests authority to undertake a procurement in order to set up contracts with Best Interest Assessors and Mental Health Assessors.</p>

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Recommendations

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| 1. To approve the continued use of existing independent Mental Health Assessors until a procurement exercise has been completed up to the value of £286,000 for year 2015/16 until a procurement has been completed |
| 2. To approve the recruitment of new independent Mental Health Assessors & Best Interest Assessors until a procurement exercise has been completed up to the value of £60,360 for year 2015/16 until a procurement is completed. |
| 3. To authorise a variation to the contract with Barnet, Enfield & Haringey Consortium for Independent Mental Capacity Advisor (IMCA) & Independent Mental Health Advisor (IMHA) up to the value £40,000pa for the 2 remaining years of contract commencing 1 April 2015 – 31 March 2017. |

1. WHY THIS REPORT IS NEEDED

- 1.1 Barnet Council has legal duties as part of the Mental Capacity Act Deprivation of Liberty Safeguards (DoLS). These safeguards exist to protect people in care homes and hospitals. Where a deprivation is identified the provider must apply to the Local Authority for authorisation. Adult Social Care administers these duties which include tasks undertaken by professionally qualified staff as well as administrative tasks.
- 1.2 In March 2014 the Supreme Court delivered a judgement which effectively widened the definition of DoLs. The number of people who are now subject to the Deprivation of Liberty Safeguards have increased substantially. In Barnet this has increased from approximately 50 people per year to an estimated 600 people. The process is time intensive and for each authorisation the work involved averages between 3 and 4 days.
- 1.3 Following each application for authorisation the local authority must commission a series of six assessments, five of which are carried out by a Best Interest Assessor (BIA) and one completed by a Section 12 approved mental health doctor known as a Mental Health Assessor (MHA).
- 1.4 Barnet currently resource Independent Assessors via an agency which is set up on Comensura, the Waiver of Contract Procedure Rules is to allow the continued use of existing Assessors and also sign up new assessors as required independently.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The current service was designed and resourced on the assumption that activity would remain at 50-55 applications per year.
- 2.2 Barnet Council does not have the internal capability or capacity to undertake the full assessment work and does not have external contracts for this

resource. Demand for this service has increased and resulted in increasing costs. Barnet Council is in competition for this resource with other Local Authorities.

- 2.3 A waiver is required for recommendations 1 and 2 as Contract Procedure Rule 8.2 has not been met due to the impact of the Supreme Court Judgement. There has not been sufficient time for procurement to be undertaken due to the volumes of assessments required. Whilst there is a market scoping exercise underway which will be followed by procurement. There is a need for the continued delivery of the MHA & BIA service. This is currently being delivered by independent assessors as well an agency that has been set up on the Comensura system for agency staff. A waiver of Contract Procedure Rule 14.3 is also required for recommendation 1 as the contracts in place were not based on a CPRs compliant competitive tender or quotation process.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 Do nothing.
The risks of doing nothing could result in legal cost and penalties which could amount to £1m liability for an individual case should this work not be delivered to a required standard.

4. POST DECISION IMPLEMENTATION

- 4.1 Communications between Barnet Mental Health Commissioners, Health Commissioners, Procurement and the service area have already commenced to ensure the appropriate procurement route is undertaken. Tender submissions will be evaluated and this will be followed by the completion of a Delegated Powers Report approving award of contracts.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The Corporate Plan 2013-2016 states that under the Financial Strategy “We will continue to keep a tight rein on our finances and provide quarterly reports on how we are managing the business – and our new contracts – to ensure even better value for money for tax payers”
- 5.1.2 Tendering for the provision of Best Interest Assessors and Mental Health Assessors will ensure that competitive rates are obtained and subsequent contract monitoring should also ensure value for money.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 A restricted tender process will be undertaken in accordance with the relevant procurement regulations. The restricted procedure involves pre – qualification of all respondents to a tender advert followed by Invitation to Tender to all

those shortlisted.

5.2.2 The cost of independent Best Interest Assessments ranges from £350.00-£500.00 per assessment up to a total value of £30,000 from 1 April 2015 – 31 March 2016.

5.2.3 The cost of an Independent Mental Health Assessment is £200.00. There are additional costs for travel with each assessment of approximately £20.

5.2.3 The total cost of continuing to use existing MHAs and sign up new independent MHAs until a procurement exercise has been completed will be approximately £316,360 up to March 2016. The cost of this service will be met from existing Adults and Communities revenue budgets.

5.2.4 Due diligence has been carried out with each assessor ensuring relevant qualifications and HR checks are in place, after which contracts have been put in place.

Dr Name	Est. No of MH Assessment 2014-15	Est no of MH Assessment 2015-16	Unit price	Cost of MH assessments
Ryan	120	160	£220.00	£61,600
Hanif	120	160	£220.00	£61,600
Shastry	120	160	£220.00	£61,600
Amin	200	260	£220.00	£101,200
Total MHA				£286,000
New MHA	60	78	£220.00	£30,360
New BIA				£30,000

5.2.5 Approving the decision will provide both a short term plan to meet current statutory demand towards the longer term more sustainable plan via a procurement exercise.

5.2.6 The cost of varying the contract with Barnet, Enfield & Haringey Consortium for Independent Mental Capacity Advisor (IMCA) & Independent Mental Health Advisor (IMHA) at approx. £40,000pa for the 2 remaining years from 1 April 2015- 31 March 2017. The cost of this variation will be met from existing Adults and Communities revenue budgets.

Contractual period	Current contract value	Additional variation	Total new annual contract value
15/16	£85,000	£40,000	£125,000
16/17	£85,000	£40,000	£125,000

5.3 Legal and Constitutional References

- 5.3.1 Council Constitution, Contract Procedure Rules, Section 15 (Waivers) – states that “In the event that the application of these rules prevent or inhibits the delivery or continuity of service, Directors, Lead Commissioners and Heads of Service may apply for a waiver. All applications for a waiver of these Contract Procedure Rules must be submitted to the Policy & Resources Committee specifically identifying the reason for which a waiver is sought, including justification and risk.”
- 5.3.2 A waiver is requested in this instance as the requirement is urgent and any delay caused by taking the decision to the Adults & Safeguarding Committee through the normal committee cycle could inhibit the delivery or continuity of this service. Further background on the need for the waiver is outlined in paragraph 2.3 of this report.
- 5.3.2 Barnet Council has legal duties as part of Mental Capacity Act 2005 Deprivation of Liberty Safeguards (DoLS). These safeguards exist to protect people in care homes and hospitals. Where a deprivation is identified the provider must apply to the Local Authority for authorisation. Adult Social Care administers these duties which include tasks undertaken by professionally qualified staff as well as administrative tasks.

5.4 Risk Management

- 5.4.1 Barnet Council must undertake this work as the risks of not doing so could result in legal cost and penalties which could amount to £1m liability for an individual case should this work not be delivered to a required standard. The current service cannot cope with this new demand and has exhausted process improvement in order to manage the increased workload.
- 5.4.2 The risks detailed above in 5.4.1 can be mitigated by setting up formal contracts with specialist providers that meet the Councils requirements. The services to be provided will be evidenced from the tender evaluation process.

5.5 Equalities and Diversity

- 5.5.1 The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies **to have due regard** to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
 - advance equality of opportunity between people from different groups
 - foster good relations between people from different groups
- 5.5.2 The pre-qualification process detailed at 5.2.2 shall include an evaluation of the tendering organisation’s equalities and diversity procedures.

5.6 Consultation and Engagement

5.6.1 Not applicable

6 BACKGROUND PAPERS

6.1 BEH MHT – Voicability contract award

<http://barnet.moderngov.co.uk/documents/s13282/CRC%20Report%20IMCA%20DOLS%20IMHA%20Contract%20Award%20Public.pdf>