

	<p>Adults & Safeguarding Committee 12 November 2015</p>
<p>Title</p>	<p>External Support Planning and Brokerage – Contract Novation</p>
<p>Report of</p>	<p>Adults and Health Commissioning Director / Director of Adult Social Services</p>
<p>Wards</p>	<p>All</p>
<p>Status</p>	<p>Public</p>
<p>Urgent</p>	<p>No</p>
<p>Key</p>	<p>No</p>
<p>Enclosures</p>	<p>None</p>
<p>Officer Contact Details</p>	<p>John Mason – Commissioning Lead, Adults & Health, Commissioning Group; John.Mason@barnet.gov.uk 020 8359 4945</p>

Summary

The Council and Barnet Centre for Independent Living (BCIL), a Community Interest Company (CIC), are party to a contract for External Support Planning and Brokerage (“the Contract”). The duration of the Contract is for an initial term of three years from 1st October 2014 to 30th September 2017, with an option to extend the Contract term for a further period of two years (“3+2”).

This report seeks approval for the Council to enter into a Deed of Novation to release BCIL from its obligations under the Contract with the Council and novate the Contract to Inclusion Barnet from 1 January 2016 for the remainder of the initial term of the Contract and, where relevant, for any extension period of up to two years.

Inclusion Barnet (IB) is a company set up with charitable status and is effectively the parent company, with BCIL remaining in existence but as the trading arm of IB. The reasons for setting up IB are strategic: for example, to facilitate closer working with other organisations like Community Barnet and thus be better placed to meet organisational aims and objectives; as well as practical, for example benefitting from Gift Aid and the ability to bid for other sources of income not open to a CIC.

The proposed novation presents no further financial implications or risks to the Council and

is supporting the sustainability of the organisation to deliver the service.

The Contract Procedure Rules were followed for the necessary authorisation level for a contract of this value. The contract novation is seen as a variation to the contract and as such requires authorisation by Committee.

The Contract provides external support planning and brokerage to meet service users' needs. This service is for people who are eligible for support under the Care Act 2014.

Recommendations

- 1. That Committee approve the novation of the Contract with the Council from BCIL to Inclusion Barnet from 1 January 2016 for the remainder of the initial term of the Contract and, if relevant, for any extension period of up to two years.**

1.0 WHY THIS REPORT IS NEEDED

- 1.1 This report is required for the London Borough of Barnet to authorise the novation of a contract for External Support Planning and Brokerage from Barnet Centre for Independent Living (BCIL) to Inclusion Barnet.
- 1.2 By way of background, BCIL was constituted in 2010 as a 100% user-led CIC to lead on information, advice and support planning. The context for this initiative was the Office for Disability Issues (ODI), who in May 2011 launched a national programme to support the development of strong and sustainable user-led organisations. The work that Barnet Council did to develop BCIL has been identified as an example of good practice by the ODI. In maximising use of volunteers and harnessing the expertise of the people who use services to provide peer support, BCIL 'added value' to delivery of contract outputs and outcomes.
- 1.3 Following a competitive tender process, approval was given on 16th September 2014 to appoint BCIL, a Community Interest Company (CIC), as chosen supplier for the provision of external support planning and brokerage services. BCIL was awarded the Contract for an initial term of three years with, a possible extension of a further two years, subject to satisfactory performance and budget.
- 1.4 External Support Planning and Brokerage helps service users to plan and broker their support needs. The Council vision is that this becomes the default option for all support planning and brokerage across all service user groups. By providing a different model this has led to more innovative and cost effective support plans. This gives people increased choice and control for their support.
- 1.5 A request to novate the Contract was made by BCIL in August 2015. The reason for the request relates to the drivers for setting up Inclusion Barnet (IB), discussed in the following paragraphs.

1.6 BCIL’s membership agreed to setting up IB as a new charity, effectively the parent, with BCIL remaining but as a trading arm. It is intended that IB will be both a Centre for Independent Living (CIL) and a Deaf and Disabled People’s Organisation (DDPO); and also support inclusion more broadly, in particular through the Barnet Giving project, which is being co-delivered with Community Barnet. The ambition is to combat current stereotyping of disabled people as passive and needing support by positioning IB as a group who use their expertise in overcoming exclusion and barriers to contribute towards the creation of a more equal society for all. IB’s four strategic priorities are Community Leadership (e.g. Barnet Giving), Empowerment and Rights (e.g. external support planning), Support to Fulfil Potential (e.g. Into Sport project) and User Voice (e.g. People’s Choice). IB will support the development of strands of work under these priorities through a mix of fundraising, primary purpose trading and revenue through the trading arm, BCIL. The BCIL Board is still developing its trading strategy, but the initial offer is likely to focus on research, consultancy and training.

1.7 Practical drivers for the decision to form a charity include:

- Charity governance provides a more suitable structure to support a membership scheme, as otherwise members are subject to the disclosure provisions of the Companies Act, which is not suitable for a disability organisation.
- Charitable status allows any revenues generated by the trading arm, BCIL, to be gifted back to the charity.
- Charities are able to apply to a wider range of funders and have increased ability to take up concessions of various kinds e.g. computing software.

1.8 In accordance with the Charity Commission’s best practice, whilst some trustees are also directors, each Board also has independent members who only serve on one Board to safeguard the interests of both organisations. Appointees to the respective posts are:

<u>IB Trustees</u>	<u>BCIL Directors</u>
Paul Hawkins	Paul Baldwin
Maria Nash	Wilfred Canagaretna
Will Pike	Maria Nash
Paul Baldwin (Chair)	Michael Nolan (Chair)
Sunethra Goonwardene	Phillip Rackham
Michael Nolan	

2.0 REASONS FOR RECOMMENDATIONS

2.1 This approach is recommended as it supports the sustainability of the organisation and thus continuation of a peer support model of service delivery.

3.0 **ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 To terminate the current contract and reprocure the service. This is not recommended as it would create additional procurement and disrupt service delivery.

4.0 **POST DECISION IMPLEMENTATION**

- 4.1 Subject to agreeing the recommendation, The Contract with BCIL will cease and novate to Inclusion Barnet. Contract monitoring and review by the Council will continue, albeit with Inclusion Barnet, following authorisation and on Contract novation.

5.0 **IMPLICATIONS OF DECISION**

5.1 **Corporate Priorities and Performance**

- 5.1.1 Novation of the current external support planning and brokerage contract will ensure the continued contribution towards the key priorities and objectives of the Council's Corporate Plan 2015-20.

'The Council, working with local, regional and national partners will strive to ensure that Barnet is the place:

- of opportunity, where people can further their quality of life
- where people are helped to help themselves
- where responsibility is shared fairly
- where services are delivered efficiently to get value for money for the taxpayer'

The Contract is regularly monitored via a performance framework including targets relating to the number of people supported by the service.

- 5.1.2 The service contributes to the objectives of the Health and Wellbeing Strategy by ensuring people have choice and greater life opportunities through effective care and support.

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

- 6.1.1 The budget allocated to the contract remains as at present: £146,000 per annum. The total contract value is also unchanged at £438,000 for the initial term of three years and £730,000 if the contract was to be extended for a further two years. The funding for this contract is from Adults and Communities Delivery Unit base budget.

- 6.1.2 The Contract Procedure Rules (CPRs) were followed for the necessary authorisation level for a contract of this value. The contract novation is seen as a variation to the contract and as such requires authorisation by Committee.

7.0 **Social Value**

- 7.1 The service provider is expected to consider social value in as creative and innovative way as possible. For example use of local businesses for supplies, and the development, recruitment and retention of a local workforce.

8.0 **Legal and Constitutional References**

- 8.1 Novation of a contract, under English Law, extinguishes that contract and replaces it with another in which a third party takes up the rights and obligations which duplicate those of one of the original parties to that agreement.
- 8.2 The Public Contracts Regulations 2015 (PCR 2015) provide for modification of existing public contracts and set out circumstances where modification may be made ('permitted change').
- 8.3 Regulation 72 (1) (d) of PCR 2015 provides for modification of an existing contract where a new contractor replaces the original contractor. Such change may be a permitted change where the replacement is as a result of corporate restructuring including takeover, merger, acquisition or insolvency. Such change may be a permitted change provided that (i) the new contractor meets the original qualitative selection criteria, and (ii) the change in contractor does not result in other substantial modifications to the contract or its nature and scope.
- 8.4 BCIL have advised there will be a corporate restructure with the acquisition of BCIL as a subsidiary Community Interest Company (CIC) to IB and a redistribution of services provided. In practice this means that the services currently being provided (by BCIL) under the Contract, whilst being delivered substantially by the same personnel, will now fall under the responsibility and sphere of activity of IB. The original qualitative selection criteria will continue to be met and the change in contractor will not result in any other substantial modifications to the Contract, its nature or scope.
- 8.5 The Council's Contract Procedure Rules (CPRs) at CPR 14.1 echo the requirements of Regulation 72, PCR 2015 and CPR 17, Appendix 1 – Table A sets out the authorisation and acceptance thresholds for such modifications.
- 8.6 HB Public Law, where instructed, will advise and assist the client department with regard to the novation of the contract and pursuant to the Council's CPRs approve the terms to be used.

9.0 **Risk Management**

- 9.1 The novation of the contract carries no additional risks to the Council; terms and conditions of the contract will not change.
- 9.2 All contracts have been processed in accordance with the Contract Procedure Rules set out in the Councils Constitution. Please see section 8.5 above.

9.3 In accordance with Contract Procedure Rules and to ensure value for money the contract will continue to be managed and performance managed throughout the contract term. This will continue with the novation of the contract to Inclusion Barnet.

10.0 **Equalities and Diversity**

10.1 The contract for the service includes explicit requirements fully covering the Council's duties under equalities legislation. The contract continues to require the provider to have a high standard of equitable behaviours. This includes compliance with Equal Opportunities Legislation, operating an equal opportunities policy, observing Codes of Practice issued by the Commission for Equality and Human Rights, and giving appropriate consideration to each customer's race, nationality, cultural or ethnic background, marital status, age, gender, sexual orientation and disabilities.

11.0 **Consultation and Engagement**

11.1 Not applicable.

12.0 **Insight**

12.1 Not applicable.

13.0 **BACKGROUND PAPERS**

13.1 The procurement of this service is in the Contract Procurement Plan from CRC on 4.11.2013 Item 14.

13.2 The [Decision - Contract Award for provision of External Support Planning and Brokerage to Barnet Centre for Independent Living](#) was published on September 16th 2014 for contract start date of 1 October 2014.