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|  | <h2>Policy and Resources Committee</h2> <h3>16 December 2015</h3> |
| Title | Authorisation for Waiver of Contract Procedure Rules - Best Interest Assessor |
| Report of | Adults and Communities Director |
| Wards | All |
| Status | Public |
| Urgent | No |
| Key | Yes |
| Enclosures | None |
| Officer Contact Details | Sue Smith – sue.smith@barnet.gov.uk ext.6105 Jess Baines-Holmes jess.baines-holmes@barnet.gov.uk ext. 3312 |

Summary

This report requests authority to increase expenditure on existing Independent Mental Health (MHA) and Best Interest Assessors (BIA), and further, to engage new independent Assessors where necessary, until the current procurement exercise is completed. Formal procurement has commenced and the new service will be in place in April 2016.

All of the above measures are required in order to enable the Council to meet its statutory obligations as a result of a Supreme Court Judgement in March 2014 which widened the scope of Deprivation of Liberty Safeguards (DoLS). The Policy and Resources Committee previously approved an increase in spend of £350,000 in March 2015 in order to address the upsurge in demand whilst the procurement was undertaken. Since then demand has grown still further and will now exceed the levels forecast at the start of this year by a further £300,000, requiring the approval of additional spend by the Committee.

Recommendations

To approve the increased use of existing independent Best Interest Assessors and recruitment of new Independent Best Interest Assessors up to the value of £300,000 for year 2015/16, prior to the completion of the formal procurement exercise.

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, hospitals and in the community. 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 widened the scope of Deprivation of Liberty Safeguards (DoLS) by redefining the test. The number of people who are now subject to the Deprivation of Liberty Safeguards have increased substantially. The process of authorising a DoL is time intensive and for each authorisation the work involved averages between 3 and 4 days. The table below indicates the increase in demand since the judgement.

| | 2013-14 | 2014-15 | 2015-16 |
|--|---------|---------|---------|
| Number of requests for authorisation | 55 | 640 | 1300 * |
| <i>* The is an estimate based on 644 received for the first 6 months</i> | | | |

- 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 Council 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 specified and resourced on the assumption that activity would remain at 600 applications per year.
- 2.2 Barnet Council does not have the internal capability or capacity to undertake the full assessment work and has yet to secure external contracts for this resource. Demand for this service has increased and resulting in increasing costs. Barnet Council is in competition for this resource with other Local Authorities.
- 2.3 A waiver of the contract procedure rules is required due to the impact of the Supreme Court Judgement. There has not been sufficient time for procurement to be completed due to the volume of assessments required.

The service we are currently undertaking is a market scoping exercise in order to commence the procurement. There is a need for the continued delivery of the BIA service as the Council has a statutory responsibility to complete assessments. This is currently being delivered by independent assessors as well as an agency that has been set up on the Comensura system for agency staff.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 Do nothing.
The risks of doing nothing could result in legal challenges with attendant costs and penalties which could amount to £1m liability 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. This will be completed for the new service to commence in April 2016. The waiver is required for the 12 months preceding this from April 2015.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The council's Corporate Plan for 2015-20 sets our vision and strategy for the next five years based on the core principles of fairness, responsibility and opportunity to make sure Barnet is a place where people can further their quality of life.

- 5.1.2 One of the strategic objectives of the Corporate Plan 2013-16 is to: "Support families and individuals that need it- promoting independence, learning and well-being". Legislation from the Mental Capacity Act (MCA) and Deprivation of Liberty Safeguards (DoLS) serve to support this corporate objective.

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

- 5.2.1 The cost of independent Best Interest Assessments ranges from £350.00-£500.00 per assessment and the spend of the Council will be up to a total value of £300,000 from 1 April 2015 – 31 March 2016.
- 5.2.2 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.

| Best Interest Assessor | Current Limit Order | Current Estimated | Estimated Spend for | Increase Limit Order By |
|------------------------|---------------------|-------------------|---------------------|-------------------------|
| | | | | |

| | | Spend in 6 months | 1.4.2015- 31.3.2016 | |
|------------------------|--------------------------|----------------------|------------------------|----------|
| KS | £9950.00 | £25,000 | £70,000 | £60,000 |
| KM | £9950.00 | £15,000 | £70,000 | £60,000 |
| VN | £9950.00 | £20,000 | £50,000 | £40,000 |
| RP | £9999.99 | £0 | £30,000 | £20,000 |
| KL | To create Limit Order | £877.20 | £30,000 | £30,000 |
| Possible Addition BIAs | - | | £50,000 | £50,000 |
| Total | | | £300,000 | £260,000 |

5.3 Social Value

5.3.1 Non applicable as we are not procuring services at this time.

5.3.2 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.

5.4 Legal and Constitutional References

5.4.1 The council's Constitution - Appendix A - Responsibilities for Functions, states that Policy and Resources Committee:

- To be is responsible for the overall strategic direction of the Council including Corporate Procurement (including agreement of the Procurement Forward Plan and agreeing exceptions to CPRs)
- To authorise procurement activity within the remit of the Committee and any acceptance of variations or extensions if within budget in accordance with the responsibilities and thresholds set out in Contract Procedure Rules

5.4.2 Council Constitution, Contract Procedure Rules, Section 15, Paragraph 15.1– states '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.'

5.4.2 A waiver is requested of Section 17, Appendix 1 – Table A – Authorisation and Acceptance Thresholds, Row D as the new service will not be in place until April 2016 and interim arrangements must be secured to ensure the Council can continue to meet its statutory obligations. These arrangements exceed the £172,514 threshold.

5.4.3 It is necessary in order for the Council to fulfil its legal duties as part of the Mental Capacity Act 2005 Deprivation of Liberty Safeguards (DoLS). These safeguards exist to protect people in care homes, hospitals and the community. The decision of the Supreme Court in March 2014 redefined what amounted to DoLS and the scope was widened significantly meaning more people were considered to be deprived of their liberty than previously. 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.

5.5 Risk Management

5.5.1 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 should this work not be delivered to the required standard. The current service cannot cope with this new demand and has exhausted process improvement in order to manage the increased workload.

5.5.2 The interim measures outlined within this paper will mitigate risk of under delivery and poor quality assessments until the new service commences in April 2016.

5.5.3 The Council will shortly fully mitigate this risk as it has commenced a procurement exercise and a new service will be in place in April 2015. Formal contracts will be agreed with specialist providers that meet the council's requirements.

5.6 Equalities and Diversity

5.6.1 Equality and diversity issues are a mandatory consideration in decision making in the council pursuant to the Equality Act 2010. This means the Council and all other organisations acting on its behalf must have due regard to the equality duties when exercising a public function. The broad purpose of this duty is to integrate considerations of equality and good relations into day to day business requiring equality considerations to be reflected into the design of policies and the delivery of services and for these to be kept under review.

5.6.2 The purpose of the DoLS regime is to provide people who are mentally incapacitated with the same protections on their liberty as people with capacity by providing oversight of any deprivation.

5.6.3 The pre-qualification process detailed at 5.2.2 shall include an evaluation of the tendering organisation's equalities and diversity procedures.

5.7 Consultation and Engagement

5.7.1 Not Applicable

5.8 Insight Data

Not applicable

6 BACKGROUND PAPER

6.1 A previous report was submitted to the Board on the 24th March 2015

[http://barnet.moderngov.co.uk/documents/s22211/Authorisation%20for%20W
aiver%20of%20Best%20Interest%20Assessor%20and%20Mental%20Health
%20Assessor%20Service.pdf](http://barnet.moderngov.co.uk/documents/s22211/Authorisation%20for%20W
aiver%20of%20Best%20Interest%20Assessor%20and%20Mental%20Health
%20Assessor%20Service.pdf)