



Cabinet

Title	Forensic Testing Assessment Services - Contract Extension and Approval to Procure
Date of meeting	5 September 2023
Report of	Leader of the Council and Cabinet Member for Resources & Effective Council
Wards	All
Status	Public with Exempt Appendices A and B (pursuant to Paragraph 3, Schedule 12A of the Local Government Act 1972)
Key	Yes: will result in the council incurring expenditure of more than £500,000
Urgent	No
Appendices	Appendix A – Lextox Pricing Schedule for Price increases 23/24 (Exempt) Appendix B – Power BI 3-Year Analysis Forensics (Exempt)
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Summary

This report is requesting:

- Cabinet to note the Authority continues to use Lextox Ltd for a further 12-month period to provide Forensic Testing and Assessments to Family Services to enable the service to complete a tender exercise and to enable a transition period prior to new contract commencement.
- Cabinet to note the overspend of £113,790 in the contract with Lextox Ltd between 05/06/2021 to 04/06/2023.

- The increase of the contract value forecast on the 2023/24 Annual Forward Plan to be authorised for the new re-procurement exercise to enable the service to cover the anticipated increase of volume from Family Services.

Recommendations

That Cabinet notes the following:

1. **A 12-month extension to the contract with Lextox T/A E4 Law Limited with new agreed pricing (Appendix 1) from 05/06/2023 to 04/06/2024 to allow time to complete the tender process.**
2. **There was an overspend of £113,790 in the contract with Lextox Ltd between 05/06/2021 to 04/06/2023 due to demand for higher volumes. The contract is a volume-based contract.**
3. **A Waiver should have been granted for 12-months pursuant to the CPR rules to enable continuity of service and enable a new procurement exercise.**

That Cabinet authorises the following:

4. **To increase from the agreed contract value of £100,000 on the Annual Procurement Forward Plan to £150,000 per annum over a 2 year plus up to 2-year extension period to a forecast total contract value £600,000.**

1. Reasons for the Recommendations

- 1.1 The existing contract with the current provider Lextox T/A E4 Law Ltd has ended, and due to the nature of the testing we require a transitional period of 12 months to ensure continuity of service and compliance with court mandated testing. We would also need a period of transition to ensure a smooth transfer in the event a new provider is identified through conduct of a Find a Tender Service (FTS) procedure.
- 1.2 The current provider has requested an increase in their pricing model which we have managed to keep the same since 2018 when the pricing was negotiated. Lextox has not received any inflationary increases since 2018 although their material and cost of expenses for travelling in relation to this contract have increased. The changes have been summarised in Appendix A.
- 1.3 In addition, the value of this contract has increased due to larger volumes of referrals being requested via court and children coming into care. There has also since the pandemic been a need for more drugs being tested over longer periods of time. This has influenced the cost of this provision.
- 1.4 To maintain the court mandated testing requirements for the next 12 months while we approach the market in an open tender. It would not be viable to change providers between tests due to the requirements of continuity needed to report to courts.
- 1.5 Pricing increases are justifiable due to cost-of-living increases and inflationary rises. With this increase it will still provide the local authority with value for money compared to the current market averages.
- 1.6 LBB has seen an increase in volume for the service, and in longer testing periods. This has resulted in an overall increase in our annual spend. The last 4 financial years spend is summarised in Table 1 below.

1.7 Table 1.

Financial Year	Total Actual Spend	Volume of Tests
2019-20	£68,126.12	125
2020-21	£129,750	196
2021-22	£155,810	198
2022-23	£157,980	215

2. Alternative Options Considered and Not Recommended

- 2.1 Frameworks have been considered for ease of market engagement. Unfortunately, no framework currently available can cover our specific requirements. We will continue to explore options concerning current frameworks which exist and new ones which become available for our use.
- 2.2 Extensions: all contractual extensions have been exhausted.
- 2.3 Allow Contract to expire and not extend. This option would require a return to spot purchases on the open market resulting in high cost and reduced ability to monitor through Key Performance Indicators. We would also not be receiving preferential rates with the provider resulting in further increase in cost, and potential reductions in quality of service which we currently receive from Lextox.
- 2.4 Reject providers price increases. This will result in the same outcome as outlined in 2.3. Even with the price rises, the rates agreed will still be below charges LBB would incur on a spot purchase basis.
- 2.5 An in-house service would not be possible due to health and safety requirements and needing experienced and qualified laboratory staff, equipment and venue to undertake the testing.

3. Post Decision Implementation

- 3.1 Legal will be consulted to conclude 12-month contract and ensure compliance with procurement rules due the increase in overall costs for the contract and impact of a 12-month extension on the current contract.
- 3.2 Approach the provider and agree the price increase as laid out in Appendix A.
- 3.3 Upon completing the 2024/25 Annual Procurement Forward Plan we will ensure the changes are reflected in the budget available for this contract.

- 3.4 This contract is currently closely monitored by the Family Services Commissioning Team and Contract Managers and has been meeting the required outcomes identified by the current KPIs that are in place. This element of robust monitoring of the current volumes of testing will continue throughout this period.

4. Corporate Priorities, Performance and Other Considerations

Corporate Plan

- 4.1 In accordance with the Council's Corporate Plan, Barnet 2024, one of the outcomes is that residents live happy, healthy, independent lives with the most vulnerable protected.
- Working towards improving services for Children and young people and ensuring the needs of children are considered in everything we do.

Corporate Performance / Outcome Measures

- 4.2 Barnet Children & Young People's Plan 2019 - 2023 outlines the ambition of our Children & Young People's Partnership to create a Family Friendly borough in which communities are resilient, high-quality education and affordable housing is available, families have access to safe and open spaces, children's rights and needs are respected and responded to and our services work holistically together to improve outcomes for Barnet's children.

This service support key outcomes within the new Children and Young People's Plan 2019 – 2024:

- Safe & Secure - Children and young people are safe and protected from harm.
- Family & Belonging – Families and children can be together and part of a community that encourages resilience.
- Health & Wellbeing - Children are supported to achieve a healthy start in life, enjoy a healthy lifestyle and to build resilience.
- Education & Learning – Children and young people can learn about the world around them.
- Culture – Our attitudes and behaviours enhance the way we work with children and young people.
- Cooperation & Leadership – We include children and young people in decision making.
- Communication – Information is shared effectively to children, young people, and families across the borough.

To achieve the Transformation Plan outcomes and targets as well as Long term Plan, services must focus on developing families' resilience, which evidence tells us, is pivotal to providing inclusive services that support all children and young people to be as independent as possible. Resilience based practice sits at the heart of improving outcomes for children and young people; an approach that is based on looking for strengths and opportunities to build on, rather than for issues or problems to treat.

Sustainability

- 4.3 The costs pertaining to this contract are contained within the individual service budgets within family services. Commissioning will continue to work with the services to ensure sustainability throughout this period of time:
- confirm continuation of envisaged requirement as recorded within the specification

- consider aggregation opportunities across service requirements to implement into future re-procurement of this provision
- ensure usage of the service is effective and review requirements continuously

We will continue to ensure we achieve sustainable procurement through delivery of SEE (Social, Environmental and Economical):

- Social: Equality and diversity, social inclusion, better accessibility and safer communities
- Environmentally: Sustainable procurement, carbon reduction, waste reduction, and recycling.
- Economically: Innovation, strong local economy, apprenticeships

Corporate Parenting

- 4.4 If Family Services are unable to implement this provision it would risk increased demand in complex needs and specialist services. There may also be an increase in waiting times, as well as complications in accessibility from children, young people, and family members to the service.

The service is vital due to court appointed drug testing, which we would need to provide in cases where directed by the Court Service. Failure to provide this service when requested by the court service within the statutory 26-week timeframe may result in litigation.

For internal testing when testing is requested by Family Services, inability to test individuals will result in children and young people being exposed to high levels of risk and harm. It will also hinder any future child protection proceedings.

Risk Management

- 4.5 High quality delivery of this service is fundamental to achieving the Family Friendly Barnet vision of Resilient Families: resilient children which aims to improve outcomes for all children and young people and their families.

The quality of the Resilient Children and Families vision will be assured through frequent contract monitoring of commissioned services against a specified framework of Key Performance Indicators (KPI's), unique to each service.

The risks of not implementing the recommendations would include:

- Lack of continuity of services – causing unnecessary stress for children currently going through the court system.
- Risk of providers increasing prices when operating out of contact- resulting in cost pressure on the Council.
- Loss of testing priority with current provider, resulting in longer testing turnaround times – resulting in missing statutory court deadlines for testing and potential litigation.

The specification and contract terms set out the requirements for the provider to ensure appropriate information sharing, confidentiality, data protection, data collection and analysis are in place. Policies and protocols will be in place to ensure that systems are robust and to ensure adherence to them. All aspects of information management and safeguarding, including policies and processes, will be examined, and checked as part of the provider's assurance and due diligence checks.

Although a large number of referrals are court requested, some may be requested by Family Services to ensure the continued safety of Children and Young People. An additional approval

process will be implemented to ensure requirements for testing are met. This will allow us to effectively monitor the cost and performance and continue to use a robust monitoring system and monitoring visits. This system is currently in place for current contracts in Family Services. This contract comes under a statutory service which is often initiated by Court orders; therefore, it is imperative that we have a continued service in place that will provide least disruption to existing cases, this also includes;

- i. Providing services within timescales for Court related cases
- ii. Unnecessary increases to the councils spend.
- iii. Complying with the Council's Contract Procedure Rules

Using Lextox for a further 12 -months will allow continuity of service, as testing requirements may be required to continue over an extended period, where it would not be viable to change providers between tests due to the requirements of continuity needed for reporting to courts.

Insight

- 4.6 An analysis has been carried out using the data provided under the current and former STA. The provider has reported at monthly intervals.

Using this reported data, we have been able to see the trends in the volumes of test carried out over the last 3 financial years. This is summarised in Appendix B.

This data has formed the basis of our recommendations and has allowed Family Services to recognise the current spend levels and volumes, and how they are related to spend by court ordered testing, and testing carried out by Family services.

A clear need for additional levels of approvals for internal testing requests has been identified and will be implemented as part of this process. This can be monitored using the newly implemented approvals process, and the reporting by the provider Lextox.

Social Value

- 4.7 We know that quality social value can help us meet our outcomes and ensure that the borough can meet its potential. The Public Services (Social Value) Act 2012 requires that consideration is given for above threshold service contracts to secure benefits for the subcommunity, environment and value for money for the London Borough of Barnet.

- 4.8 Commissioning will ensure where applicable that this is represented by our providers so we can deliver better for the borough and meet our corporate objectives. Dependent on the provision we will look to achieve outcomes by various social value initiatives for example:

- Developing skills and creating jobs and training opportunities
- Creating supply chain opportunities for SME's
- Offering work placements to young people and adults
- Providing more opportunities for individuals or groups facing greater social or economic barriers
- Reducing the carbon footprint
- Helping to improve public spaces such as parks
- Supporting local charities or community groups
- Hosting community events

- Volunteering in the local community

5. Resource Implications (Finance and Value for Money, Procurement, Staffing, IT and Property)

- 5.1 This contract was authorised on the Annual Procurement Forward Plan 2023/24 for £100,000 per annum on a 2+2 basis (total contract value £400,000). We require an increase of £50,000, bringing the per annum value to £150,000 on a 2+2 basis (total contract value £600,000). Updated authorisation of procurement to a value of £600,000 is required to support conclusion of the contract post tender exercise.
- 5.2 The cost over the last 2 financial years has increased due to multiple factors including but not limited to Covid, increased volume of testing and increased testing periods from an average of 6 months to 12 months effectively doubling the average cost of testing. Total actual spend is summarised in Table 1.
- 5.3 A clear need to increase the budget from £100,000 to £150,000 is required to cover the increased volume of testing, and to take account of the increased costs due to the price increase by the provider. (Appendix 1)
- 5.4 A more robust approval system will be implemented for testing issued by Family Services, to ensure appropriate referral, and to ensure cost savings are made where appropriate.
- 5.5 There will be no indirect costs related to these recommendations.
- 5.6 This is a volume based statutory contract. The vast majority of tests are court issued. There are no controls we can put in place to minimise the risks or volumes that are court directed.
- 5.7 A smaller number of tests requested by Family Services will be closely monitored to ensure referrals are appropriate, and the testing requested is proportionate.
- 5.8 The current budget of £400,000 is provided under the existing s17 cost centre. The value of the extension which is £150,000 would be provided from this budget also as referrals are received via the Court Service.
- 5.9 The impact of these recommendations on other council services will be minimal.
- 5.10 There is currently no external funding available for these recommendations.
- 5.11 The provider Lextox have provided confirmation of both Public Liability and Professional Indemnity insurance documents.
- 5.12 CPR rules state that Cabinet is to authorise both the 12-month contract award as existing extension options have been used in the form of a waiver and to authorise contract value uplift to cover the current overspend. As the 12-month extension is subject to a waiver and the overspend is now retrospective, Cabinet has been requested to note this, rather than authorise this.
- 5.13 Cabinet authorisation is sought for the procurement of the new contract to be released, as the Annual Procurement Forward Plan currently only has a value of £400,000 (2+2). An appropriate upward adjustment to £600,000 (2+2) would need to be authorised in time for June 2024 (end of proposed extension period). This increase of £200,000 will be provided from the existing s.17 cost centre.

6. Legal Implications and Constitution References

6.1 **Extension:** The original contract commenced on 5 June 2021 with a 2-year term. It expired on 4 June 2023 ("**Original Contract**"). Whilst general terms relating to an extension to the original contract were included, the 1-year extension was not contemplated in the Original Contract. The spend under the Original Contract totalled £313,790, however, only £200,000 was approved and budgeted for at the time of entering the Original Contract. This Cabinet Report seeks authorisation of the overspend of £113,790 ("**Overspend**"). The extension value is £150,000, and therefore the overall spend of the original contract including the extension would be £463,790. This contract is deemed to be subject to the Light Touch Regime ("**LTR**") due to the nature of the services being procured with forensic testing being used for court proceedings in a social care setting. The current LTR threshold is £663,540 and therefore, the Authority remains under-threshold. Whilst the Public Contract Regulations 2015 ("**PCR 2015**") do not apply for this procurement, the Authority must ensure that it conducts itself in a fair and transparent when extending the Original Contract in ensuring the extension is being carried out for good reason and is not in a bid to circumvent procurement law. The Authority must also comply with its own Contract Procedure Rules ("**CPRs**") which shall assist the Authority in its duty to ensure a fair and transparent procurement process is conducted for the extension. Further, (as described below), the Authority is taking the opportunity to run a compliant procurement process which indicates that any future contract award will be procured with competition and will not be subject to a Single Tender Action.

As the Authority is unable to fulfil all of the requirements of CPR 11.6, it must go through the waiver process pursuant to CPR 12. The Head of Service or above must justify the extension and carry out a risk assessment pursuant to CPR 12.1. Any waiver can only be granted for no more than 12 months (CPR 12.3).

6.2 **New Contract:** the new contract is to commence following authorisation with contract to end 4 June 2024. The total value of the new contract to be tendered during the 12-month period will be £600,000 on a 2+2 basis, this will be conducted under good practice of PCR 2015 open procedure due to the requirement being subject to Light Touch Regime (LTR) and under threshold for a LTR procurement. The Authority must still ensure a fair and transparent procurement process is conducted to award the new contract.

6.3 Under the Council's Constitution, the responsibilities of Cabinet include the following functions:

- Development of proposals for the budget (including the capital and revenue budgets, the fixing of the Council Tax Base, and the level of Council Tax) and the financial strategy for the Council;
- Monitoring the implementation of the budget and financial strategy;
- Recommending major new policies (and amendments to existing policies) to the Council for approval as part of the Council's Policy Framework and implementing those approved by Council;
- Approving policies that are not part of the policy framework;
- Management of the Council's Capital Programme;

- All key decisions - namely:
- an executive decision which is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the budget for the service or function to which the decision relates; or
- an executive decision which is likely to be significant in terms of its effects on communities living or working in an area of two or more wards of the Borough;
- a decision is significant for the purposes of above if it involves expenditure or the making of savings of an amount in excess of £1m for capital expenditure or £500,000 for revenue expenditure or, where expenditure or savings are less than the amounts specified above, they constitute more than 50% of the budget attributable to the service in question;
- award of contracts over £500,000 and all matters reserved to the Executive under the Contract Procedure Rules this may be done via the Procurement Forward Plan;

7. Consultation

7.1 None.

8. Equalities and Diversity

8.1 The statutory grounds of the public sector equality duty are found at section 149 of the Equality Act 2010 and are as follows:

A public authority must, in the exercise of its functions, have due regard to the need to:

- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

8.2 The broad purpose of this duty is to integrate considerations of equality into day to day business and keep them under review in decision making, the design of policies and the delivery of services.

9. Background Papers

9.1 STA 2019 [Forensic Assessment 12 month STA Contract 2019.pdf](#)

9.2 STA 2021 extension [E4Law Limited Contract dated 17.11.22.pdf](#)

