



**Havering**  
LONDON BOROUGH

## Notice of Non-key Executive Decision

<b>Subject Heading:</b>	Approval to waive the Contract Procurement Rules to enter into two contracts - one with Action First Recruitment Ltd and one with Reed Social Care for the provision of Best Interests Assessors services
<b>Cabinet Member:</b>	Councillor Wendy Brice-Thompson
<b>CMT Lead:</b>	Barbara Nicholls, Director Adult Social Care & Health
<b>Report Author and contact details:</b>	Lurleen Trumpet, Adult Safeguarding Service Manager Tel: 01708 433548 lurleen.trumpet@havering.gov.uk
<b>Policy context:</b>	Mental Capacity Act 2005 and Care Act 2014 compliance and statutory requirement.
<b>Financial summary:</b>	The combined value of the two contracts is estimated to be no more than £190,000
<b>Relevant OSC:</b>	Individuals
<b>Is this decision exempt from being called-in?</b>	It is a non-key decision by a member of staff

Non-key Executive Decision

**The subject matter of this report deals with the following Council Objectives**

Communities making Havering  
Places making Havering  
Opportunities making Havering  
Connections making Havering

## Part A – Report seeking decision

### DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

Approval to waive the requirements of the Contract Procurement Rules (CPR) and enter into a contract with Action First Recruitment Ltd and with Reed Social Care, specialist suppliers for the provision of Best Interest Assessment (BIA) services, for a period of up to 12 months to a maximum value of £190,000 across the two contracts. The suppliers will be paid on a 'pay as you go' basis, giving Adult Social Care the flexibility to have the suppliers complete in the region of 585 BIA assessments / renewals during the life of the contract.

### AUTHORITY UNDER WHICH DECISION IS MADE

Contract Procedure Rules: 14.5 Emergency Action  
A Member of CMT personally may authorise a waiver of any of these Rules if they consider that the circumstances are such that such a waiver is necessary and desirable to further the aims of the Council or for the benefit of the residents of the borough.

Powers of Assistant Director and Heads of Service under Section 3.4 Contract Powers (a) of the Council's Constitution to approve commencement of a tendering process for and to award all contracts below a total contract value of £156,000.

### STATEMENT OF THE REASONS FOR THE DECISION

The Mental Capacity Act Deprivation of Liberty Safeguards (MCA DoLS) came into effect on 1st April 2009. MCA DoLS provides for the lawful deprivation of liberty of those people who lack the capacity to consent to arrangements made for their care or treatment in either hospitals or care homes, but who need to be deprived of liberty in their own best interests, to protect them from harm.

Local authorities (designated as 'Supervisory Bodies' under the legislation) have statutory responsibility for operating and overseeing the MCA DoLS whilst hospitals and care homes ('Managing Authorities') will have responsibility for applying to the relevant local authority for a Deprivation of Liberty authorisation.

Hospitals and care homes must refer to the local authority where they think that an individual's liberty is being deprived whilst in their establishment.

The local authority is responsible for completing and coordinating the assessment process, including the involvement of appropriately trained doctors, and independent advocates where necessary, and undertake an assessment of the individual (involving their family where appropriate). The assessment must conclude whether or not the individual's liberty is being deprived, and if this is assessed as being in that individual's best interests, that the 'DoLS' is authorised. Any DoLS authorised are for a specified

### Non-key Executive Decision

time period and must be reviewed with a view to renewal or it being deemed as no longer required.

The assessments are undertaken by trained Best Interest Assessors (BIA's) who are usually qualified social workers, who undertake additional training to become BIA assessors, and who are usually employed by a local authority.

In March 2014, the Supreme Court considered the cases of P V Cheshire West, and P&Q v Surrey County Council, in what has become known as the Cheshire West judgement. The ruling threw out previous judgements that had defined deprivation of liberty rather more narrowly, finding that all people who lack the capacity to make decisions about their care and residence, and are under the responsibility of the state, who are under continuous control and supervision as well as lack the option to leave their care setting, are being deprived of their liberty.

The effect of this at a national level was to substantially increase the number of people who required assessment by a trained BIA, to undertake the suite of assessments required to determine whether a DoLs authorisation is required.

Prior to March 2014, Havering received approximately 25-30 DoLS referrals per annum from care homes and hospitals. In 2014/15 and 2015/16, 349 and 560 applications for assessments respectively were received. As at the end of March 2017 approximately 1207 referrals have been received (both new applications and reviews of previously granted DoLS).

The Council has previously contracted with Action First Recruitment Limited from April 2016 to April 2017 and there is no provision to extend under the existing contract. The value of expenditure under the contract previously entered is £99,000.00 and the expected maximum expenditure of the new contract to be entered is £99,000.00. Due to the high demand of assessments and renewals the Council also had a contract with Remedy for £90,000 during 2016/17, however they were unable to fulfil the terms of the contract and provide the capacity required. As such we are therefore looking to contract with Reed Social Care (as well as with Action First recruitment Ltd), up to a maximum value of £90,000.00, who has proven experience in providing this service to a number of other Local Authorities. Individual assessments and/or reviews will be assigned to each of the two suppliers based on available capacity, on a case by case basis.

In the meantime, the Safeguarding Adults team have attempted to recruit permanent and locum Best Interest Assessors without success. Adult Social Care has endeavoured to recruit more qualified permanent social workers on to the BIA rota however this is proving challenging due to the high numbers of newly qualified social workers completing their Assessed and Supported Year in Employment ASYE. In addition, those qualified to carry out BIAs are few in number and unable to carry out enough assessments to maintain the waiting list at acceptable levels and reduce the risk of legal challenge to the Council for not completing assessments within acceptable timescales.

As noted already, nationally, most local authorities are struggling to meet demand, due to the volume of referrals and shortage of trained BIA Assessors, with local

### Non-key Executive Decision

authorities competing for agency BIA assessors to assist in the short term. Havering Adult Social Care has worked closely with the Council's Social Care recruitment agency (Adecco) to source BIA's. However for the reasons noted, Adecco has struggled to provide suitable candidates to build up the required capacity within the Service to keep up with the pace of referrals that have been received to date.

Plans are in place to recruit more permanent staff and to train more BIAs but this is unlikely to be realised until the latter part of 2018 when a number of social workers complete their ASYE and are eligible to carry out Best Interest Assessments.

Additional resources are therefore still required to keep waiting lists to a minimum and to deal with the increasing numbers of requests for assessments, currently at 23 - 30 per week. The Council is therefore proposing to contract with Action First Recruitment Ltd and with Reed Social Care to undertake BIA assessments on behalf of the Council,. The legal and financial risk to the Council is high if outstanding and new referrals are not assessed in a timely manner.

The government is proposing changes to the current legislation which, if agreed, would lessen the burden upon local authorities. The new draft Bill was produced in March 2017 proposing changes to the current Deprivation of Liberty Safeguards process that would reduce the burden on local authorities. However this Bill needs to be agreed by Parliament and it involves a change to the Mental Capacity Act 2005. As such it is now unlikely, if these proposals are agreed, that any changes will be operational until 2018/19 (i.e. the current burden reduced).

Exceptions to the competition requirements set out in the Schedules to the Council's Contract Procedure Rules (CPRs) may be made only if:

- i) all relevant law is complied with e.g. European procurement and best value legislation and, as in this case, the contract falls within one of the exceptions listed in Rule 14 of CPRs,
- ii) the Competition Financial Thresholds Exceptions Form (set out in the Procurement Framework at section C2), is fully and properly completed and signed by the relevant Member of CMT and;
- iii) the person awarding the contract can demonstrate that the contract represents the best value that can be obtained in the circumstances.

The estimated maximum value of each of the two contracts means that they each fall below the threshold for European Procurement. Best value would be achieved by paying for individual assessments completed rather than employing temporary staff, which would attract additional on-costs and management time.

The Competitive Financial Thresholds Exceptions Form has been completed and submitted.

#### 14.5 Emergency Action

A Member of CMT personally may authorise a waiver of any of these Rules if they consider that the circumstances are such that such a waiver is necessary and desirable to further the aims of the Council or for the benefit of the residents of the

Non-key Executive Decision

borough.

This exception is applicable for the reasons relating to service need and difficulty of service supply set out above and the risk of legal challenge to the Council should BIAs not be completed within acceptable timescales.

**OTHER OPTIONS CONSIDERED AND REJECTED**

Adult Social Care has taken steps to recruit qualified BIAs without success. The Safeguarding Adult Team advertised in September 2016 but was unable to recruit any permanent BIAs or experienced Social Workers. The social workers that have been recruited with the ASC locality teams have generally been newly qualified workers and as such they do not meet the criteria to be trained as BIAs. Adecco are unable to source any agency BIAs due to the current demand for BIAs. NEPRO do not provide specialist social work services.


**PRE-DECISION CONSULTATION**

N/A

**NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER**

Name: Lurleen Trumpet

Designation: Adult Safeguarding Service Manager

Signature: 

Date: 19/5/17

## **Part B - Assessment of implications and risks**

### **LEGAL IMPLICATIONS AND RISKS**

The Deprivation of Liberty Safeguards (DoLS) was developed under the Mental Capacity Act 2005 and came into effect in March 2009. As reflected at page 3 of this report, local authorities are under a mandatory statutory obligation to review and grant deprivation of liberty requests received from hospitals and care homes within their locality.

The Law Commission has held consultations to review the DoLS in 2015 and its proposals which include a draft Bill amending the MCA 2005 and replacing the DoLS with a new regime known as the Liberty Protection Safeguards is pending approval by Parliament. This would perhaps explain the 1-year contract term being proposed for these contracts as the new regime would most likely take effect before that year runs out.

Whereas officers have not specified in the report the criteria for award of the Best Interest Assessment to each Supplier nor the value of each contract, the combined value of both contracts have been specified as £190,000. The fact that the Council's Scheme of Delegation only permits a Head of Service can only approve the award of contracts up to a maximum of £156,000 however presupposes that the value of each individual contract will be less than £156,000 which is slightly less than the EU threshold for similar contracts. While this means that a regulated procurement process is not required for these contracts, officers must still ensure that the procurement process adopted complies with the provisions of The Treaty on the Functioning of the European Union (TFEU) with regard to equal treatment of tenderers, proportionality and transparency of the procedure adopted and mutual recognition of tenderers. The procedure must also comply with the provisions of the Council's Contract Procedure Rules (CPRs).

If the value of each contract awarded to Reed Social Care and Action First Recruitment Ltd is below the EU threshold and both contracts are advertised as specified in Regulation 110 (2) and Regulation 110 (5) of the Public Contracts Regulations 2015 (the Regulations), the award must be published in Contracts Finder within 24 hours. This requirement is dispensed with if the contracts are not advertised.

With regard to the circumstances necessitating the waiver, the report makes it clear that the Service is being inundated with DoLS requests and urgent action is required to prevent the Council being adjudged to be in breach of its statutory duty to assess fresh requests or review existing ones.

Legal comments provided by Tolu Akinosun, Senior Procurement Lawyer.

Non-key Executive Decision

**FINANCIAL IMPLICATIONS AND RISKS**

In the 16/17 budget settlement, permanent growth of £600k was awarded for the pressure in DOLS.

During 2016/17 a contract was in place with Action First Recruitment Ltd for a total cost of £99,000.00 and also a contract with Remedy for £90,000.00 to support with the additional increasing demands. The contract with Action First Recruitment Ltd was successful but the contract with Remedy was terminated early due to them being unable to provide the levels of service required.

Currently there remains insufficient capacity within the teams of trained BIAs to carry out the increasing demand of assessments, as described above. It is anticipated in the interim to continue to use Action First Recruitment Ltd and a new contract with Reed Social Care to commission sufficient qualified BIA officers. The cost to commission these staff should not exceed £190k within a financial year and will be funded from existing supplies and services budget within Adult Social Care.

There is a risk should the Adults service not have sufficient in house trained assessors going forward, the demand will outstrip the growth allocated.

Falil Onikoyi – Strategic Finance Business Partner – Adults and Public Health

**HUMAN RESOURCES IMPLICATIONS AND RISKS  
(AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)**

The report raises some recruitment and retention issues which highlights the existing skills shortage of qualified social workers.

However, this arrangement would be outside the Adecco Contract and BLOOM. Agreement would need to be sought to proceed outside the agreed managed service provider contract.

Action First Recruitment Limited is a LTD company providing Temporary employment agency activities.

Due to the nature of the roles and the requirement to be a qualified Social Worker these roles are likely to be subject to the new Intermediaries Legislation. The Agency will need to be informed of the responsibility under the new legislation

Cheryl Graham – Strategic Business Partner (HR)



Non-key Executive Decision

**EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS**

The current agency (Action First Recruitment Ltd) and Reed Social Care will ensure that needs of communities are being met in Havering thereby ensuring we are fully compliant with equality legislation.

Diane Egan, Community Safety & Development Manager

**BACKGROUND PAPERS**

N/A

Non-key Executive Decision

**Part C – Record of decision**

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

**Decision**

Proposal agreed

*Delete as applicable*

**Details of decision maker**

Signed



Name: Barbara Nicholls

Cabinet Portfolio held:  
CMT Member title: Director of Adult Services  
Head of Service title  
Other manager title:

Date: 19/05/2017

**Lodging this notice**

The signed decision notice must be delivered to the proper officer, Andrew Beesley, Committee Administration & Interim Member Support Manager in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on 19/5/2017

Signed 