

CABINET – 12 JANUARY 2016

EXCEPTION TO CONTRACT PROCEDURE RULES FOR DEPRIVATION OF LIBERTY SAFEGUARDS (BEST INTEREST ASSESSMENTS) - URGENT ACTION TAKEN BY THE CHIEF EXECUTIVE

REPORT OF THE DIRECTOR OF ADULTS AND COMMUNITIES

PART A

Purpose of the Report

- 1 The purpose of this report is to advise the Cabinet of urgent action taken by the Chief Executive, following consultation with the Leader of the Council, to approve an exception to the Contract Procedure Rules to enable a contract to be awarded to Quality Assured Projects for the delivery of Best Interest Assessments in relation to the Deprivation of Liberty Safeguards (DOLS).
- 2 As a consequence of a Supreme Court judgement in March 2014 there has been a fourfold increase in referrals to the DOLS service. In order to address the backlog of assessments and authorisations that has arisen and to protect the Council from risk of challenge it was necessary to commission an external agency to undertake assessments, allowing time for the Authority to develop additional internal capacity to deal with the growing demand and to explore other potential solutions.

Recommendations

- 3 That the urgent action taken by the Chief Executive, following consultation with the Leader, to grant an exception to the Contract Procedure Rules be noted.

Reasons for Recommendations

- 4 Rule 6 (b) (ii) of the County Council's Contract Procedure Rules states that an exception to the Rules may be made within the relevant law and with the authority of the Executive [the Cabinet] where it is satisfied that an exception is justified on its merits. In an urgent case the Chief Executive after consultation with the Council Leader or Deputy Leader (save where this is not practicable) may direct that an exception be made subject to this being reported to the next meeting of the Executive.

Timetable for Decisions (including Scrutiny)

- 5 Implementation of the contractual arrangements with Quality Assured Projects will need to commence in January 2016 in order to ensure that the required number of Best Interest Assessments can be completed in 2016.

Policy Framework and Previous Decisions

- 6 The DOLS service was implemented in 2009 and hosted by the County Council across Leicester, Leicestershire and Rutland via a Partnership Agreement, which was extended until 2014 with Cabinet agreement. In 2014 all supervisory body responsibilities transferred to the local authorities and Leicester City established its own service. The County Council continues to provide the service to Rutland via a Service Level Agreement.

Resource Implications

- 7 Discussions have taken place with Quality Assured Projects, a division of Liquid Personnel Ltd. Quality Assured Projects meets the Council's minimum eligibility requirements for providers of services to vulnerable service users (in terms for instance of its equality and personnel policies) and it can offer a managed service. The total value for this arrangement will not exceed the UK Public Contract Regulations threshold for the 'Light Touch Regime', i.e. £589,148. This includes any additional costs related to purchasing mental health assessments. Some in-house and managerial and administrative support will also be required. Independent advocacy support as needed will be supplied via existing arrangements.
- 8 It should be noted that the Council will only pay for assessments as they are completed and signed off by the Adults and Communities Department as the signatory body. The cost will be met from a combination of this year's departmental underspend and growth that will be included in the 2016/17 Medium Term Financial Strategy.

Circulation under the Local Issues Alert Procedure

- 9 None.

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PART B

Background

- 10 The purpose of DOLS is to protect vulnerable adults from arbitrary decisions to deprive them of their liberty, and to provide a robust and transparent framework within which to challenge the authorisation of DOLS. People who lack the capacity to consent to arrangements made for their care and treatment may need to be deprived of liberty in their own best interests in order to protect them from harm. DOLS provides a legal framework for this.
- 11 Authorisation must be sought from supervisory bodies (local authorities) in order to lawfully deprive a person of their liberty. Where a request for a standard authorisation of DOLS is made, the local authority - in this case the County Council - is responsible for arranging a number of assessments to determine whether the authorisation should be granted.
- 12 In March 2014 the Supreme Court extended the definition of what constitutes a deprivation to include people who live in community settings such as supported living, shared lives, residential schools and, in some circumstances, people's homes. This led to a substantial increase the number of applications received by local authorities.
- 13 As well as being responsible for DOLS for residents in Leicestershire the County Council currently hosts the DOLS service for Rutland Council under a service level agreement. In 2013-14 there were 695 referrals across Leicestershire and Rutland, rising to 2,030 in 2014-15. In the first half of 2015-16 there were 1,672 referrals, reflecting the national trend.
- 14 The County Council has always taken a proactive approach to DOLS and was therefore in a strong position to deal with the rise in applications but despite this it is unable to meet current demand. There are currently 1,852 referrals awaiting allocation. There are also around 120 people in supported living or shared lives arrangements who are likely to require an assessment.
- 15 Individuals waiting for a DOLS assessment could be deprived of their liberty without appropriate legislative safeguards in place, putting them at risk of arbitrary decisions being made about their residence and care and leaving them unable to appeal those decisions. This would also place managing authorities, particularly supervisory bodies, open to legal challenge, with the associated financial and reputational risks. The Care Quality Commission report "Monitoring the Deprivation of Liberty Safeguards 2014-15" recognised the pressure that local authorities faced and acknowledged the backlog of applications nationally but stressed the importance of compliance with DOLS.
- 16 Quality Assured Products has capacity to clear the majority of Leicestershire's backlog within 9 months. This will help ensure that individuals' rights are protected and that they receive appropriate care and treatment, and will also enable the Council to develop additional internal capacity to deal with the growing demand in the meantime. In order to expedite the work the Chief Executive, following consultation with the Leader of the Council, has agreed an exception to the Council's Contract Procedure Rules.

Background Papers

None.

Relevant Impact Assessments

Equality and Human Rights Impact Implications

- 17 The County Council's arrangements for DOLS relate to some of the most vulnerable service users and patients, and their operation serves to protect these individuals in a way that is compliant with the Equalities Act 2010 and the Human Rights Act 1998. The provider will be made aware of our policies in this regard and expected to act in accordance with them.