



**CABINET – 24 APRIL 2023**

**EXCEPTION TO CONTRACT PROCEDURE RULES**  
**URGENT ACTION TAKEN BY THE CHIEF EXECUTIVE**  
**REGARDING MENTAL HEALTH ASSESSORS**

**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 to agree an exception to the Council's Contract Procedure Rules, to enable arrangements to be made for qualified Mental Health Assessors to complete assessments relevant to Deprivation of Liberty Safeguards (DoLS) authorisations.

**Recommendation**

2. It is recommended that the Cabinet notes the urgent action taken by the Chief Executive to directly award by exception in accordance with the Contract Procedure Rules to allow the current 'Standing List' arrangement for Mental Health Assessors to be maintained from 1 January 2023 until 31 December 2024, or until the Deprivation of Liberty Safeguards legislation is updated.

**Reasons for Recommendation**

3. The Council's Constitution (Contract Procedure Rule 6 (b) (ii)) provides that exceptions to the Contract Procedure Rules may be made by the Cabinet where it is satisfied that an exception is justified on its merits and that in urgent cases the Chief Executive (after consultation with the Leader or Deputy Leader save where this is not practicable) may direct that an exception be made subject to it being reported to the Cabinet.
4. The exception was necessary to fulfil the Council's primary responsibility as the Supervisory Body under Deprivation of Liberty Safeguards regulations, as it is required to organise, complete, and respond to requests for authorisations within mandated deadlines.
5. An appropriately qualified doctor is required to complete a Mental Capacity Assessment which is used to inform the Best Interest Assessor's Deprivation of Liberty Safeguards report relating to an individual. This process is currently arranged via an approved Standing List of such qualified assessors.

6. The circumstances are explained in Part B of this report.

### **Timetable for Decisions (including Scrutiny)**

7. The Chief Executive agreed the exception on 17 February 2023.

### **Policy Framework and Previous Decisions**

8. The exception to the Contract Procedure Rules follows the Council's Constitution (Contract Procedure Rule 6 (b)(ii)).
9. A previous exception has been agreed and was in place between 26 April 2021 and 31 December 2022.

### **Legal implications**

10. The Council's Contract Procedure Rules (CPR) limit the use of a Standing List where the total value of contracts is estimated to exceed the relevant UK Threshold. In this case, although the value of contracts to be awarded to each individual provider will not exceed the threshold, the cumulative value of all the contracts does do so. This is permitted on the basis that the Council can objectively justify the sub-division of the procurement to different providers and in this context it is relevant that the Standing List is open to any appropriately qualified provider to join; that the criteria for qualification are clearly set out (see paragraph 18); that providers can join the Standing List at any time; and so the broader procurement principles of fairness, transparency and non-discrimination are met.

### **Resource Implications**

11. Each assessment has a fee of £195, which is a value benchmarked against other local authorities with this statutory responsibility. The fee has been static for the last four years.
12. The total value of the work undertaken by the Mental Health Assessors has an annual value of approximately £450,000. The value for the two-year period of the exception would therefore be circa £900,000.
13. The Mental Health Assessor arrangements are being administered through existing staff resource. The DoLS budget will be kept under review to ensure it meets current demand and any changes reported through normal Medium Term Financial Strategy processes.
14. The Director of Corporate Resources, the Director of Adults and Communities and the Director of Law and Governance have been consulted on the rationale behind this contract exception.
15. Any risk associated with this award is considered to be minimal, because the current Standing List is open to any Doctor who holds the relevant qualifications. Doctors are periodically engaged to make them aware of the opportunity to join

the list. The payment per assessment is low and the spend per doctor is significantly below the relevant procurement threshold.

**Circulation under the Local Issues Alert Procedure**

16. None.

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**PART B****Background**

17. Local Authorities have primary responsibility as the 'Supervisory Body' under the Deprivation of Liberty Safeguards (DoLS). In operational terms this means that Local Authorities receive requests from residential or nursing homes and hospitals ('Managing Authorities') and are required to organise, complete and respond to requests for authorisations within the mandated deadlines under the DoLS regulations. As part of this the Supervisory Body needs to arrange for a qualified assessor to complete relevant assessments. This process is currently arranged via a 'Standing List' of appropriately qualified assessors.
18. To be suitable to undertake mental health and eligibility assessments, the doctor must:
  - Be approved under Section 12 of the Mental Health Act 1983, or a registered medical practitioner with at least three years' post-registration experience in the diagnosis or treatment of mental disorder.
  - Provide evidence they have completed the DoLS mental health assessor programme, made available by the Royal College of Psychiatrists.
  - Undertake annual update training provided by the Royal College of Psychiatrists and provide evidence of this.
  - Join the Disclosure and Barring Service (DBS) update service which lets applicants keep their DBS certificates up to date online and allows employers to check a certificate online.
  - Have a current registration with the General Medical Council.
  - Comply with the law for the time being in force and in particular will comply with all Equality Legislation and anti-discriminatory practices and the Mental Capacity Act 2005 in the supply and provision of the service.
  - Have attended, or would be prepared to attend, the Supervisory Body's training programme.
19. Engagement has been carried out with doctors to look at introducing a procurement Framework for these Assessments; however, there was limited interest in applying to be on such a Framework.
20. Since then, changes to the current DoLS Best Interest Assessor process have been announced, including the new Liberty Protection Safeguards (LPS) standards due to be introduced in 2020, but which have been delayed. It is now expected that the new LPS arrangements will be introduced no earlier than 2024.

**Proposal and/or Options**

21. In December 2022 there were 20 doctors on the Standing List who were able to conduct such assessments. An exception to the Contract Procedure Rules allows the current Standing List arrangement for Mental Health Assessors to be maintained from 1 January 2023 until 31 December 2024, or until the DoLS legislation is updated, at which point changes to the legislation can be considered and the potential to conduct a procurement will be explored.

**Equality and Human Rights Implications**

22. There are no equalities or human rights implications arising from the recommendations in this report.

**Background Papers**

23. None.

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