

Cabinet Meeting on Wednesday 19 July 2023

Deprivation of Liberty Safeguards – Contract Award



Councillor Julia Jessel, Cabinet Member for Health and Care said,

“The Council has a legal duty to consider Deprivation of Liberty Safeguards applications, where people are unable to make their own decisions in life.

“Staffordshire has a large number of care homes and we have more applications to consider than most local authorities. They require a lengthy process which creates a huge demand on our resources.

“With our social workers facing a rising demand for Care Act assessments we will need additional capacity for Deprivation of Liberty Safeguards to avoid an unacceptable waiting list.”

“New legislation had been promised to reduce the burden of Deprivation of Liberty Safeguards, but unfortunately has been delayed. I have called on the Secretary of State to speed up this legislation and in the meantime to provide extra funding for the additional capacity we will require.”

Report Summary:

This report seeks approval to procure additional capacity to support the Deprivation of Liberty Safeguards process.

Recommendations

I recommend that Cabinet:

- a. Approves procurement of additional capacity to support the Deprivation of Liberty Safeguards process.
- b. Delegate authority to Director of Health and Care to award contracts for this additional capacity.

Deprivation of Liberty Safeguards – Contract Award

Recommendations of the Cabinet Member for Health and Care

I recommend that Cabinet:

- a. Approves procurement of additional capacity to support the Deprivation of Liberty Safeguards process.
- b. Delegate authority to Director of Health and Care to award contracts for this additional capacity.

Local Member Interest:

NA

Report of the Director for Health and Care

Reasons for Recommendations:

1. The Council has a statutory duty to manage Deprivation of Liberty Safeguards (DoLS) applications. This is a procedure prescribed in law when it is necessary to deprive a person of their liberty in a hospital or care home if they lack capacity to consent to their treatment and care.
2. The term 'deprivation of liberty' can encompass a range of different restrictions that people may experience. The majority of applications relate to older people who have dementia and are deprived of their liberty because either the hospital ward or the care home has a locked door. This is entirely appropriate to keep them safe from harm and does not compromise the well-being of the individual.
3. The process of managing DoLS applications is prescribed in law and is time consuming. It requires six assessments completed by at least two different professionals to determine whether the restrictions are in the person's best interests. All aspects need to be satisfied and have to be agreed by a representative of the Council.
4. Staffordshire is a large county and has a lot of care homes, which means we receive a high number of DoLS applications compared to other local authorities. During 2022/23 we received an average of 550 applications monthly, an increase of more than 20% compared to the average of 450 monthly in 2021/22. Around 200 of these are subsequently withdrawn leaving around 350 applications to consider each month.

5. Historically we had a large waiting list of DoLS applications. On 8th March 2019 the Local Government and Social Care Ombudsman published a report finding that the Council had unlawfully decided not to carry out assessments of low and medium priority applications and significantly delayed assessing the remaining applications.
6. We are aiming to reduce the waiting list of DoLS applications below 550, equivalent to one month's work. This is to ensure that we can demonstrate that we are meeting our legal obligations. On 26 May 2023 we had 1288 DoLS applications waiting to be completed. This compares favourably with similar local authorities but still risks criticism from the Ombudsman and/or the Care Quality Commission as part of adult social care enhanced assurance.
7. We use Council and Midlands Partnership University Foundation Trust employed staff to support the DoLS process. However the increased demand for Care Act assessments, up 17% post-Covid compared to pre-pandemic, as well as some staff vacancies means that their capacity is limited to 50-100 applications per month. We have therefore been using additional capacity commissioned from adult social care agencies in order to reduce the waiting list.
8. The expectation was that this would be a temporary measure as the Government was planning to replace DoLS with new legislation called Liberty Protection Safeguards. This would have reduced demand as well as time requirements. However Liberty Protection Safeguards have been repeatedly delayed with no implementation date in the foreseeable future and a possibility that they will be abandoned altogether. The Council has written to the Secretary of State for Health and Social Care to highlight the burden of DoLS and ask that Liberty Protection Safeguards are brought forward.
9. We therefore need to maintain additional capacity to support the DoLS process in order to reduce the waiting list further. The recommendation is to procure additional capacity from an adult social care agency to consider 250-300 applications per month. The contract would be for 2+1 years and on a payment per case basis. The expectation is that the unit cost would be between £350 to £500.
10. We would also work with other local authorities to explore how the DoLS process could be partially automated, whilst still meeting the prescribed legal process, in order to reduce the time requirements.

Legal Implications

11. The additional capacity is required to ensure that the Council meets our legal obligations in respect of DoLS. The procurement of additional capacity would be undertaken in line with procurement regulations.

Resource and Value for Money Implications

12. The value of the contract would be up to £1,500,000 annually, a total of up to £4,500,000 over a three-year period. This would be funded from Health and Care reserves to avoid a pressure on the Council's Medium Term Financial Strategy. This would require review before September 2025 light of emerging legislation and the Council's financial position.

Climate Change Implications

13. There are no implications on climate change.

List of Background Documents/Appendices:

Community Impact Assessment (CIA)

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