

KENT COUNTY COUNCIL – PROPOSED RECORD OF DECISION

DECISION TO BE TAKEN BY:

Clair Bell, Cabinet Member for Adult Social Care and Public Health

DECISION NO:

20/00003

For publication

Key decision: YES

expenditure in excess of £1,000,000

Title of Decision: Deprivation of Liberty Safeguards Mental Health Assessments Contract Extension

Decision: As Cabinet Member for Adult Social Care and Public Health, I propose to:

- a) **Extend** the current contract with South East Memory Assessment Services (SEMAS) for 12 months from 1 April 2022 to 31 March 2023 by means of a Written Justification for Exemption from the Normal Contract Procedure and
- b) **Delegate** authority to the Corporate Director Adult Social Care and Health to take relevant actions, including but not limited to finalising the terms of and entering into required contract or other legal agreements, as necessary to implement the decision.

Reason(s) for decision: The Mental Capacity Act 2005 introduced Liberty Protection Safeguards (LPS) to replace Deprivation of Liberty Safeguards (DoLS) and was originally to come into force from 1 October 2020. During the pandemic Central Government announced that it would not be possible to meet the October deadline and decided that full implementation of Liberty Protection Safeguards would be April 2022. At the time of the announcement, the view was the revised date would allow sufficient time, following publication of the final code to prepare for implementation. The required processes to implement for April 2022 have not been started, and it is expected to be a year from the point of consultation to implementation, and the consultation has not begun.

Under the current arrangements, a DoLS requires a mental health assessment, carried out by a mental health assessor. The Mental Capacity Act (MCA) DoLS Regulations 2008 stipulate this must be a medical doctor experienced in mental health and are section 12 approved, therefore approved clinicians under the Mental Health Act 1983. Furthermore, the local authority is responsible for ensuring that sufficient mental health assessors are available. Capacity with a previous provider was limited – this was identified by a project group set up to clear a significant number of pending (backlog) cases. That group worked with Commissioning to source alternative provision for DoLS Mental Health Assessors, following due process which led to South East Memory Assessment Services (SEMAS) being awarded the contract in April 2016. The contract was expanded due to a key decision in May 2018 to purchase extra support to clear the DoLS backlog, this was called project DoLS.

Since that time, the provider (SEMAS) has been able to provide the number of assessments the Kent DoLS team have requested to the standard required and within the appropriate timeframes.

The contract with South East Memory Assessment Service is due to expire on 31 March 2022. Therefore, the proposal is to extend the current contract from 1 April 2022 to 31 March 2023 by means of a Written Justification for Exemption from the Normal Contract Procedure, to allow the

contract to continue to run whilst the legislation is implemented.

If the legislation consultation has not started in April 2022, the project team will look to re-let the contract post April 2023 with a break clause, allowing time for the release of the LPS legislation and the needs of the council to continue to use this service.

Financial Implications: The value of the twelve months contract extension will be approximately £430,000 (dependant on demand). Total spend on purchasing Metal Capacity Assessments (non-Project DOLs) through the contract will be over £1,000,000 by the end of March 2023, thereby requiring a key decision.

Legal Implications: This is being procured under Procurement Policy Note (PPN 01/20) was released in March 2020 setting out information and associated guidance on the public procurement regulations and responding to the current coronavirus, COVID-19, outbreak.

The regulation states that: in responding to COVID-19, contracting authorities may enter into contracts without competing or advertising the requirement so long as they are able to demonstrate the following tests have all been met:

- 1) There are genuine reasons for extreme urgency, eg: you need to respond to the COVID-19 consequences immediately because of public health risks, loss of existing provision at short notice, etc;
 - you are reacting to a current situation that is a genuine emergency - not planning for one.
- 2) The events that have led to the need for extreme urgency were unforeseeable, eg:
 - the COVID-19 situation is so novel that the consequences are not something you should have predicted.
- 3) It is impossible to comply with the usual timescales in the PCRs, eg:
 - there is no time to run an accelerated procurement under the open or restricted procedures or competitive procedures with negotiation;
 - there is no time to place a call off contract under an existing commercial agreement such as a framework or dynamic purchasing system.
- 4) The situation is not attributable to the contracting authority, eg:
 - you have not done anything to cause or contribute to the need for extreme urgency.

Equalities implications: EQIA is part of current service documentation. An Equalities Impact Assessment (EqIA) covering LPS has been completed based on current guidance, and this will be updated upon publication of LPS Codes of Practice

Data Protection implications: General Data Protection Regulations are part of current service documentation. A Data Protection Impact Assessment (DPIA) covering LPS has been completed based on current guidance, and this will be updated upon publication of LPS Codes of Practice

Cabinet Committee recommendations and other consultation: The proposed decision will be discussed at the Adult Social Care Cabinet Committee on 18 January 2022 and the outcome included in the paperwork which the Cabinet Member will be asked to sign.

Any alternatives considered and rejected:

Any interest declared when the decision was taken and any dispensation granted by the Proper Officer:

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signed

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date

