

KENT COUNTY COUNCIL – RECORD OF DECISION

DECISION TAKEN BY:
Cabinet Member for Adult Social Care

DECISION NO:
18/00021

For publication

Key decision

Affects more than 2 Electoral Divisions and expenditure of more than £1m.

Subject: COMMISSIONING OF NEW SERVICES FOR DEPRIVATION OF LIBERTY SAFEGUARDS ASSESSMENTS (NON-PRIORITY)

Decision: As Cabinet Member for Adult Social Care, I agree to:

- a) **COMMISSION** new services for Deprivation of Liberty Safeguards (DOLS) assessments to reduce size of the backlog of non-priority assessments; and
- b) **DELEGATE** authority to the Interim Corporate Director of Adult Social Care and Health, or other nominated officer, to undertake the necessary actions to implement the decision.

Reason(s) for decision: The total number of Deprivation of Liberty Safeguards (DOLS) applications has increase from under 300 in 2013/14 to 2866 in 2014/15, 5113 in 2015-16 and 5069 in 2016-17. As of 1 February 2018, KCC has received a total of 4,402 applications since 1 April 2017. It is necessary for additional capacity to be sourced to help reduce size of the Deprivation of Liberty Safeguards applications yet to be completed which make up the backlog of non-priority assessments.

Financial Implications: On 20 February 2018, Kent County Council agreed a budget for 2018/19 that identifies an additional funding of £1.54m for processing non-prioritised DOLS applications from care homes and hospitals.

Legal Implications: The Deprivation of Liberty Safeguards are the legal framework to ensure independent assessment of the best interests of individuals who lack the mental capacity to consent to care arrangements, which involve a restriction on their liberty. The Council has a statutory responsibility to complete assessments for Deprivation of Liberty Safeguards applications for relevant people living in its area.

The risk of exposure to legal repercussions for failing to meet statutory obligations under the Deprivation of Liberty Safeguards that is claim under the Human Rights Act 1998 is reduced significantly by the Council undertaking the proposed backlog project.

Equality Implications: An equalities impact assessment has been completed.

Cabinet Committee recommendations and other consultation: The proposed decision was discussed at the Adult Social Care Cabinet Committee on 18 May 2018. *(Michael Thomas-Sam (Head of Strategy and Business Support) and Clare Maynard (Head of Commissioning Portfolio – Outcome 2 and 3) were in attendance for this item)*

1. Michael Thomas-Sam introduced the report which set out the arrangements for commissioning new services for Deprivation of Liberty Safeguards assessments and the plans to reduce the size of the backlog of non-priority applications. He said that the Supreme Court judgement of March 2014 had increased the DOLS applications nationally. Kent County Council had received a total of 4,402 applications yet to be completed since 1 April 2017.

- a) In response to a question, Michael Thomas-Sam said that less than 5% of DOLS applications were refused.
- b) In response to a question, Michael Thomas-Sam said that the number of DOLS applications included in the backlog would fluctuate.
- c) In response to a question, Michael Thomas-Sam said that 18% of the DOLS applications received in 2017/18 were from NHS Trusts in Kent.
- d) In response to a question, Michael Thomas-Sam said that when the additional funding for DOLS was provided by the Government in 2015, the demand for DOLS had since been factored into the budget allocation to local authorities. He added that KCC were responsible for managing the DOLS assessment process irrespective of whether the applications where the application came from – care homes or hospitals.
- e) In response to a question, Michael Thomas-Sam talked about the DOLS acid test and said that an individual who lacked the capacity to consent to the arrangements for their care and was subject to continuous supervision and control and was not free to leave their care setting, was deprived of their liberty and should be the subject of a DOLS application.
- f) In response to a question, Clare Maynard talked about the benefits of the light-touch procurement process and said that the regime enabled Kent to use a lighter procedure whilst keeping fully compliant with regulations.
- g) In response to a question, Michael Thomas-Sam said that although the new legislation applied to people aged 18 and over, there were transition issues that may have led to an individual aged 16-17 to go through the assessment. He said that there was no funding from Government in terms of the 16-17-year olds transitioning from children's services to adult services, the funding came from Adult Social Services within KCC.

2. RESOLVED that the decision proposed to be taken by the Cabinet Member for Adult Social Care, to

- a) commission new services for Deprivation of Liberty Safeguards assessments to reduce the size of the backlog of non-priority assessments; and
- b) delegate authority to the Interim Corporate Director of Adult Social Care and Health, or other nominated officer, to undertake the necessary actions to implement the decision,

be endorsed.

Any alternatives considered:

- Recruit dedicated in-house resource on fixed term contract;
- Leverage local IBAs, and temporarily increase in-house support;
- Commission new service for non-priority DOLS assessments (excluding mental health assessment), while leveraging the contract with current provider for non-priority mental health assessments;
- Commission new service for non-priority DOLS assessments (including mental health assessment); and
- Do nothing, managing risk using the ADASS prioritisation tool.

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



25 MAY 2018

signed

date