

MUNICIPAL YEAR 2015/2016 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

OPERATIONAL DECISION OF:

Ray James, Director –
Health, Housing and Adult
Social Care

Agenda – Part:	KD Num: 4310
Subject: Staffing restructure in the Deprivation of Liberty Safeguards Team	
Wards:	

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1. EXECUTIVE SUMMARY

This report sets out the recommendation for managing the Deprivation of Liberty Safeguards Service and legislative compliance risks for 2016/2017.

With the substantial increase in applications for authorisation under the DoLS, the challenge has increased with keeping within timescales and importantly safeguarding those service users who may be eligible for the DoLS. As such, options for managing the DoLS are set out with recommendations for additional complement of staff during 2016-2017. Along side this is the requirement for the Local Authority to undertake Judicial DoL Assessments for authorisation by the Court of Protection for those people who live in extra care or supported tenancies. This is recommended for a one year period until the legislative change has been announced as expected in 2017.

2. RECOMMENDATIONS

It is recommended that in order to ensure legal compliance with statutory timelines, the following posts are appointed with a one year probationary period, subject to funding agreements for 2017/2018 and beyond: The following independent assessments are procured.

- 2 full time Best Interest Assessors – Social Workers
- 0.5 Supervising Safeguarding Mental Capacity Officer (SSMCO)
- 1 Safeguarding Mental Capacity Officer (SMCO)
- 1 Mental Capacity and DoLS apprentice
- BIA and Sec 12 independent assessments

3. BACKGROUND

This report sets out the requirement within the Deprivation of Liberty Safeguards (DoLS) as a result of Supreme Court judgements causing substantial increases in applications.

Supreme Court judgement resulted in an increase in DoLS applications of 66 in 2013-2014 to 585 cases in 2014-2015; 1004 cases in 2015-2016 with more expected in the next financial year.

This judgement also included the need for Judicial DoL assessments for Authorisation by the Court of Protection, for those who live in supported accommodation or supported tenancies. In order to support these applications there is a need to create and manage a list of people who may require a Judicial DoL Authorisation and to support the care teams in preparing court applications. It is expected that a minimum of five cases will be presented to the court 2015/16.

Central Government have not fully funded the additional burden on Local Authorities caused by the DoLS. New legislation is expected in 2017 and the Law Commission have completed a financial impact assessment that confirms the costs of an individual DoLS is approximately £1050 per case.

The PWC Audit to Enfield DoLS Service identified high risk areas in the DoLS which has been added to the Corporate Risk Register. There are risks in respect to legislative targets and waiting lists; the challenge of contested cases, Judicial DoLS and costly input of Court of Protection.

The Department of Health have issued statements to urge local authorities to address DoLS cases as best as they can and that doing nothing is not an option. The government has also asked for the Law Commission to accelerate their review of the Mental Capacity Act 2005 DoLS arrangements. London Borough of Enfield participated in the consultation, which would likely result in a draft Bill by the end of 2016 and a change in legislation to simplify the DoLS by 2017. Draft proposals will be available in April 2016.

4. ALTERNATIVE OPTIONS CONSIDERED

4a) New DoLS Service Structure

The first alternative is to set up a DoLS Service structure with resources to meet expected numbers. This option would be able to meet statutory requirements through the following additional complement of staff.

- 2 F/T Best Interest Assessors (£48,697.00)
- 0.5 Senior Safeguarding Mental Capacity Officer (£13,927)
- 1 Safeguarding Mental Capacity Officer (£24,744)
- MCA and DoLS Apprentice (Level 2, £13,000)
- 446 Independent assessments BIA assessment (£81,534)
- 800 Independent sec 12 assessments (£156,000)

The DoLS service is required to manage the DoLS process from start to finish, including risk assessment & management, procurement of services, managing independent assessors within employment requirements, documents management,

ensuring reviews are timely, relationships with providers, answering queries, managing the DoLS in box, coordinating the assessments and processing calls. Preparing a list of people requiring Judicial DoL assessments, managing the DoLS steering group which incorporates both Judicial DoL cases, DoLS and MCA.

The service would require funding as follows:
2016-2017 £400,000

Funding from 2017-2018 will be re-assessed following outcome of any changes expected in the legislation.

4b) DoLS Commissioned Externally

The DoLS Service currently commissions some cases externally for Best Interest Assessments to reduce backlog. All DoLS can be commissioned out to private assessors at a cost of £200-£500 per assessment for best interest assessors, with £200 per mental health assessor.

This arrangement, without cross borough commissioning power, presents a higher cost and absence of control over cases needed to assure legal compliance.

4c) Do Nothing

The existing DoLS Service consists of a manager, two agency Best Interest Assessors, one agency coordinator part time and from October 2015 support from the Business Hub. The Council constraints with respect to agency staff going forward and removal of highly trained co-ordinators (viewed as administrators within the business hub criteria) will result in further backlogs and risk of legal challenge.

The Department of Health has recommended this is not an option for local authorities. To not respond to the reality of this law would lay the Council open to the risk of litigation and leave people without the Deprivation of Liberty Safeguards.

5. REASONS FOR RECOMMENDATIONS

This report recommends the establishment of the DoLS Service Structure for 2016-2017, which will provide the minimum staff compliment to efficiently and effectively meet the requirements and timescales.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES, AND OTHER DEPARTMENTS

6.1 Financial Implications

The costs for the increased staffing is summarised below:

- 2 F/T Best Interest Assessors (£48 697.00)
- 0.5 SSMCO (£13,927)
- 1 SMCO (£24,744)
- MCA and DoLS Apprentice (Level 2, £13,000*)
- 370 Independent assessments BIA assessment (£81,534)
- 800 Independent sec 12 assessments (£156,000)

Total

£400,000.00

*Plus any additional training costs required.

This additional cost will be funded through the 2% precept budget which will be included in the HHASC Revenue Budget and will therefore be monitored accordingly, with any variances to budget reported through the monthly revenue monitoring process.

6.2 Legal Implications

The Council has a duty to ensure continuous improvement to ensure value for money in accordance with the Local Government Act 1999. The new posts must be advertised and recruited to in accordance with the Council's applicable policy and procedure.

The council is the supervising body for authorising a person's deprivation of liberty in accordance with the provisions of the Mental Capacity Act 2005. The process for authorising a deprivation of liberty requires various statutory assessments that must be carried out by a range of professionals. Once the assessments have been completed a decision must be made whether to authorise the person's detention so they can receive care and/or treatment in a particular setting. This decision is ultimately taken in the persons best interests. Recent case law has had a major impact on the legal interpretation of deprivation of liberty. Unless appropriate authorisation for deprivation of liberty is obtained, the likelihood of litigation is highly likely and compensation claims can be high, as well as the possible damage that could be done to the Local Authority's reputation. It is essential therefore that the council has the right staff to carry out this important statutory function.

6.3 Property Implications

Any additional staff would sit within the existing service area.

7. KEY RISKS

The key risk is compliance with statutory timescales; this report has identified the most cost effective mechanism through additional staff over 2016-2017. This will be for a year period until the legislative changes come into force in 2017 which may simplify the process and provide opportunity for most efficiencies. It should be noted that these risks are part of the corporate risk registered as high risk.

8. IMPACT ON COUNCIL PRIORITIES

a. Fairness for All

The aim of this report and recommendations is to assure local residents and those most vulnerable that they have not been deprived unlawfully of their liberty and care and treatment is provided in the best interests of keeping a person safe.

b. Growth and Sustainability

Not applicable.

c. Strong Communities

The service provision recommended would be able to facilitate a more transparent and accountable service to the statutory requirements and work more closely with partners (including hospitals, care homes and supported accommodation) to enable those at risk to be identified and prioritised for assessment.

9. EQUALITY IMPACT IMPLICATIONS

The options available have been considered for their potential impact on equalities. The DoLS Service data will be coming to the Safeguarding Adults Board from March 2016 to provide additional oversight and challenge where appropriate. It is expected that the running of a DoLS Service to statutory requirements will provide the necessary checks to ensure those whom due to age and/or disability (including mental health) are provided with the appropriate and least restrictive care and treatment.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

This report has set out the increasing pressure on the DoLS Service as a result of the Supreme Court judgement; resulting in reduced ability to meet statutory deadlines and the extension of demand to other services (such as legal and adult social care through reviews and challenges, including Court of Protection application).

12. PUBLIC HEALTH IMPLICATIONS

Safeguarding of adults and those most vulnerable is seen as a significant health determinant. The Deprivation of Liberty Safeguards, and how they are applied, will have a significant impact on a person's wellbeing and there are clear implications for those who may be unlawfully deprived and require authorisations to bring to light the restrictions which may be used but within their best interests.

Background Papers

None.

MUNICIPAL YEAR 2015/2016 REPORT NO.

Delegated Authority Report

REPORT OF:

Director of Finance,
Resources and Customer
Services

Agenda – Part: 1

Item:

**Subject:
Social Care IT Solution**

KD 4249

Cabinet Member consulted: N/A

Contact officer and telephone number:

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1. EXECUTIVE SUMMARY

- 1.1 The Council currently uses Carefirst (provided by OLM Systems Limited ("OLM")) as its primary adults social care line of business application. The application is used as a Case Management Social Care tool for Safeguarding, Social Care Assessments, Social Care payments, Support plans and information sharing.
- 1.2 The Council application is currently hosted by the Council, however the system utilises Oracle technology that is incompatible with the Council's strategy of moving its hosted applications to the Azure Cloud. For this reason the opportunity has been taken to evaluate the market for a social care IT solution capable of meeting the IT business needs of both children and adults to bring about system consolidation and deliver efficiencies to the Council's IT estate.
- 1.3 A review of the options available to the Council has been undertaken and the analysis of the systems considered is detailed in paragraph 5 of the report. It is recommended that the Council proceed with the proposal from OLM and enter into a 5 year contract.

2. RECOMMENDATIONS

- 2.1 To approve the proposed direct award of the contract to OLM Systems Limited (OLM) in accordance with the LASA Framework (RM1059), to provide a fully hosted Social Care IT system for a term of 5 years (see part 2 for further information).
- 2.2 To establish and approve the budget for the hosted OLM Social Care IT system over the 5 year term (as detailed in the Part 2 report).
- 2.3 To establish and approve a budget for Enfield and 3rd party implementation costs (as detailed in the Part 2 report), to support the delivery of the project.

- 2.4 That that in lieu of the unlimited liability normally sought from suppliers, liability, for the purpose of this contract, is capped at 125% the annual amount payable to the supplier under the contract (detailed in paragraph 6.1 of the part 2 report).
- 2.5 To note that in accordance with the Council's Contract Procedure Rules, a parent company guarantee shall be provided by OLM's parent company, OLM Group Limited.

3. BACKGROUND

- 3.1 In view of the fact that the current solution is hosted by the Council, ~~utilises Oracle technology which is incompatible with the Council's strategy of moving its hosted applications to the Azure Cloud,~~ negotiations with OLM were instigated to seek a new software delivery and pricing model (hosted managed service / SaaS). The opportunity has also been taken for the Council to test the market to establish if there are alternative systems in the market that could meet the Council's functional and technical requirements and deliver cost efficiencies.
- 3.2 A thorough exercise to consult the business and agree updated functional and technical requirements has been completed. Any chosen solution will support the delivery of the principles that underpin the Enfield 2017 Programme. It will also need to interface with the Council's new digital platform as part of a holistic online experience for the customer. Electronic systems will also be expected to fully utilise the Council's website to deliver online transaction capability to minimise the use of paper.
- 3.3 An evaluation of the leading systems in the market place (Microsoft and Careworks) was undertaken.

4. ANALYSIS OF THE SOFTWARE OPTIONS AVAILABLE

Detailed in the part 2 report.

5 ALTERNATIVE OPTIONS CONSIDERED

- 5.1 Do nothing stay with the existing OLM on premise solution and purchase / develop the additional functionality required.
- 5.2 Move to a hosted / managed service provided by OLM and purchase / develop the additional functionality required.

5.3 Undertake a further competition utilising an appropriate framework to test the market to identify a new hosted Social Care IT system.

5.4 An analysis of the above options is detailed in the part 2 report.

6. REASONS FOR RECOMMENDATIONS

Detailed in the Part 2 report.

7. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES

7.1 Financial Implications

The one off OLM costs will be funded from the Council's Transformation funding or where appropriate the costs will be capitalised.

The maintenance cost will be met from the existing ICT revenue resources (FG0227).

7.2. Legal Implications

7.2.1 Section 111 of the Local Government Act 1972 gives a local authority power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. The services from the IT companies/ contractors detailed and implementation of the project as proposed within this Report are incidental to the functions of the Council's departments and are intended to help ensure an effective IT support to the Council.

7.2.2 The Council also has a general power of competence in section 1(1) of the Localism Act 2011. This states that a local authority has the power to do anything that individuals generally may do provided it is not prohibited by legislation.

7.2.3 The Council proposes to directly award the contract to OLM in accordance with the Local Authority Software Applications Framework ("LASA Framework"). The Framework permits direct award and the Council must ensure it complies with the "direct award rules" of the Framework.

7.2.4 The Council's Constitution, in particular the Contract Procedure Rules ("CPR's") permit the Council to call-off from an existing framework as long as the framework terms permit such. The Council's Corporate Procurement Service has conducted due diligence on the use of the LASA Framework, and is satisfied that the Council may procure such services, in accordance with the Framework.

- 7.2.5 The Council must comply with its Constitution, CPRs and as the contract value exceeds the EU threshold, it must also comply with the Public Contracts Regulations 2015.
 - 7.2.6 The Council must comply with its obligations relating to obtaining best value under the Local Government (Best Value Principles) Act 1999.
 - 7.2.7 Pursuant to CPR 21, for every contract exceeding £250,000 the Council is required to obtain a performance bond or a parent company guarantee.
 - 7.2.8 As the contract value exceeds £250,000 this is a Key Decision and the Council must comply with the Key Decision procedure.
 - 7.2.9 All legal agreements arising from the matters described in this report must be approved in advance of contract commencement by the Assistant Director of Legal Services and Governance.
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7.3 Property Implications

N/A

7.4 Procurement Implications

- 7.4.1 The risk of direct award is that by not competing the requirement it is difficult to demonstrate that the price is competitive and also that the product is the best solution.
- 7.4.2 That in all cases procurement must follow contract procedure rules and EU regulations.
- 7.4.4 Any call off from a framework must be in line with the framework terms and conditions and that the framework must be legally compliant and be accessible by Enfield Council.

8 KEY RISKS

The risks in detailed in 7.4.1 have been mitigated by undertaking market testing as detailed in the Part 2 report. Any system risks identified during the project implementation will be recorded, mitigated and reviewed on an ongoing basis.

9 IMPACT ON COUNCIL PRIORITIES

9.1 Fairness for All

N/A.

9.2 Growth and Sustainability

N/A.

9.3 Strong Communities
N/A.

10 PERFORMANCE MANAGEMENT IMPLICATIONS

The availability of a market leading Social Care case management system will support the delivery effective services to the residents of the borough.

11 HEALTH AND SAFETY IMPLICATIONS
N/A

12 PUBLIC HEALTH IMPLICATIONS
N/A

13 Background Papers

None

