

# Nottingham City Council Delegated Decision



**Nottingham**  
**City Council**

Reference Number:	4481
Author:	Oliver Bolam
Department:	People
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Subject: Provision of Deprivation of Liberty Safeguards - Services and Assessments

Total Value: £212,999 (Type: Revenue)

Decision Being Taken:

- 1) To spend up to £106,000 on Mental Health Assessors and Best Interest Assessments during financial year 2021/22. This spend has been called off under a compliant framework.
- 2) To spend up to £106,999 on Mental Health Assessors and Best Interest Assessments during financial year 2022/23. This spend has been called off under a compliant framework.

Reasons for the Decision(s)

The Mental Capacity Act (2005) places a duty upon local authorities to ensure that citizens who lack the mental capacity to make decisions in regard to their care and treatment are not unlawfully deprived of their liberty. Until March 2014, the Council was resourced to undertake this duty. However, on March 19 2014, the Supreme Court ruled on two cases: P vs Cheshire West and Cheshire Council and Q vs Surrey County Council. These judgements significantly widened the remit as to where and how a deprivation can occur. From that point, the Deprivation of Liberty Safeguards team received more referrals than they could process. This created a significant backlog of assessments.

In order to manage the risks associated with this backlog, all outstanding assessments are triaged and RAG-rated as per the Association of Directors of Adult Social Services guidance. This enables the highest priority cases to be prioritised. To ensure that the highest priority cases are dealt with in a timely manner, it is necessary to commission a number of assessments each year with Action First, an external provider. Action First is on an existing compliant framework that is managed by Nottinghamshire County Council.

Authorising a Deprivation of Liberty requires a Best Interest Assessment to be completed and a Mental Health Assessor to confirm that the citizen lacks mental capacity to consent to their care and treatment. It may be a future requirement that the overall backlog of outstanding assessments is cleared. That will require a further delegated decision to approve the necessary spend for that.

<b>Other Options Considered:</b>	<b>To do nothing: allowing a waiting list to develop in regard to the highest priority cases would place citizens at risk of not having their needs appropriately met and leave the Council open to legal challenge in the Court of Protection, so this is option is discounted.</b>
<b>Background Papers:</b>	<b>None</b>
<b>Published Works:</b>	<b>None</b>
<b>Affected Wards:</b>	<b>Citywide</b>
<b>Colleague / Councillor Interests:</b>	<b>None</b>
<b>Consultations:</b>	<b>Those not consulted are not directly affected by the decision.</b>
<b>Crime and Disorder Implications:</b>	<b>Not applicable</b>
<b>Equality:</b>	<b>EIA not required. Reasons: This decision does not represent proposals for a new or changing policy, service or function.</b>
<b>Social Value Considerations:</b>	<b>Not applicable</b>
<b>Decision Type:</b>	<b>Portfolio Holder</b>
<b>Subject to Call In:</b>	<b>Yes</b>
<b>Call In Expiry date:</b>	<b>30/12/2021</b>
<b>Advice Sought:</b>	<b>Legal, Finance, Procurement, Human Resources</b>

**Legal Advice:**

The proposals in this report raise no significant legal issues and are supported.

The Deprivation of Liberty Safeguards assessments are required to assess citizens in accordance with the Council's statutory duty under the Mental Capacity Act 2005. As a result of the increased numbers of assessments required, the Council is unable to undertake these assessments internally and so external support is needed to provide them.

Action First is accessible to the Council by way of call-off contract from a compliant framework established by Nottinghamshire County Council. This ensures compliance with the Council's Contract Procedure Rules and the Public Contracts Regulations 2015 and seeks to offer value for money as the provider was awarded a place on the framework following a complaint tender process.

Future requirements of these services beyond the proposed scope and term will need to be considered in due course to identify the most appropriate and value for money route available to the Council.

Advice provided by Dionne Claire Screamon (Solicitor) on 26/10/2021.

**Finance Advice:**

This decision requests approval to spend £213,000 to commission external assistance from supplier Action First. Assistance is required to help manage an increase in referrals for Best Interest Assessments that has occurred in response to a change in legislation.

The total cost of £213,000 will be spent over two budget years, £106,000 in budget year 2021/22 and £107,000 in budget year 2022/23. These will be one-off costs and are to be funded by a provision previously set aside for this obligation.

Action First is a supplier that has been identified through a framework agreement established by Nottinghamshire County Council. The work will be delivered through a call-off contract for the purpose of providing assessments.

The contract should be managed and monitored effectively to ensure the level of support commissioned is in line with requirements, i.e., to ensure assessments are prioritised effectively and carried out in a timely manner.

Advice provided by Chanelle Poyser (Commercial Business Partner) on 18/10/2021.

**Procurement Advice:**

This decision relates to expenditure on the provision of Deprivation of Liberty Safeguards assessments during the financial years 2021/22 and 2022/23. The work will be delivered by Action First Assessments Limited through a complaint call-off contract under a framework established by Nottinghamshire County Council, which is available for Nottingham City Council to use. Therefore, there are no further procurement implications arising from this decision. Action First Assessments were selected for the framework through an open tender process and therefore offer best value for money. A review of future requirements for these services should be undertaken in a timely way to enable any procurement process to be completed for delivery from April 2023, if required.

Advice provided by Jo Pettifor (Procurement Team Manager) on 07/10/2021.

**HR Advice:**

In order to manage the risk associated with the significant backlog of outstanding assessments all cases are prioritised and if the Deprivation of Liberty Safeguards (DoLS) team are unable to deal with the high demand, excess cases are sent to Action First, which ensures high priority cases are dealt with in a timely manner. Not doing so could lead to citizens being placed at risk and leave the Council open to legal challenge in the Court of Protection. Management should carefully consider the need to use an external provider. However, as the DoLS receive more referrals than they can process, this service is required to meet the demand and to ensure high priority cases are actioned. Action First are on an existing compliant framework, which is managed by Nottinghamshire County Council. No people impact has been identified based on the information contained in the decision. The proposal to use Action First to action excess high priority cases is therefore supported.

Advice provided by Zoe Rylatt (HR Consultant) on 18/10/2021.

**Signatures**

<b>Adele Williams (Portfolio Holder for Adults and Health)</b>
<b>SIGNED and Dated: 20/12/2021</b>
<b>Catherine Underwood (Corporate Director for People)</b>
<b>SIGNED and Dated: 07/12/2021</b>