

Operational Decision Record

Publication Date 16 April 2024	Decision Reference Number 5115
Decision Title	
DoLS Assessments Second Call Off	
Decision Value	
£154,325	
Revenue or Capital Spend?	
Revenue	
Department	
People's Division	
Contact Officer (Name, job title, and contact details)	
Sarah Barr, Commissioning Lead Officer – sarah.barr@nottinghamcity.gov.uk	
Decision Taken	
<ol style="list-style-type: none"> 1. To agree to Nottingham City to continue to utilise Nottinghamshire County Council's Deprivation of Liberty Safeguard Framework to call off assessments where Nottingham City Council require additional capacity for the reasons outlined in this document. 2. To approve further call off for a total of 12 months on a 6 months + 6 months basis from the Nottinghamshire County Council's 4-year DoLS Assessment Framework, with a value of £154,325. 3. To delegate authority to Director of Commissioning and Partnerships to award and sign the call off order. 	
Reasons for Decision and Background Information	
<p>The Deprivation of Liberty Safeguards (DoLS) form part of the Mental Capacity Act (2005) to which local authorities have a statutory requirement to provide. Failure to provide these rights can amount to false imprisonment. This service enables Nottingham City Council (NCC) to meet this statutory function. Without this service NCC would be unable to meet this statutory duty. This would place NCC at a significant risk of legal challenge. NCC could be challenged through Judicial Review, through the Court of Protection (who have the power to impose cost orders on NCC) and challenge under human rights legislation (Article 5 ECHR rights to liberty / protection against arbitrary detention /the right to a fair trial).</p>	

In 2023 a judge granted leave for a solicitor to seek costs of £942.06 against Nottingham City Council for their work undertaken for citizen known as SB. This was for a period of unauthorised deprivation of liberty caused by a delay in assessment. Although this case pre-dates Nottingham City Councils work with ID Medical, it does however highlight the risk that courts can award costs and impose fines on Councils for gaps in DOLS authorisations. The concern is that if there were to be any delays caused by failings of the provider this is likely to lead to further fines for the Council. Therefore, by mutual agreement between NCC and the provider the new contract will include a clause to permit us to seek to recover these costs from ID Medical from April 2024 onwards.

Best Value Review

The key findings of the review

Mental Health Assessors are specialist doctors who undertake DoLS assessment work, on a freelance basis. Employing them directly is not an option as Nottingham City Council do not have the experience and infrastructure to directly employ doctors. An arrangement is therefore required to commission these services externally. Nottingham City Council do not have the necessary resources to offer clinical supervision, peer support or training in house and the regulatory checks and insurance costs would require new and disproportionate expenditure and expertise.

Nottingham City Councils internal Best Interest Assessors team are working at capacity. In 2017 there were 17 “field work” Best Interest Assessors (BIAs) on the DoLS rota. In 2023 this was reduced to nine, largely due to managers requesting that their team members be withdrawn from this work. Currently Nottingham City Council have only 3 internal BIAs who are fully active on the rota (every 2 months), with a further 7 internal BIAs who participate on the rota with less frequency (every 2-3 months).

NCC Outsourced DoLS Assessments 2023-2024

Type of Assessment	Number of agency assessments expected to be required 2023-24
Best Interests Assessor	Approx. 9 per month.
Mental Health Assessor	Approx. 30 per month.

The number of BIA assessments Nottingham City Council have required per month varied in 2023-24. This is largely due to provider failure which at times was the reasoning behind Nottingham City Council holding back from making referrals due to a backlog in previous referrals being completed. This seems to have improved recently and so it is anticipated that a more regular referral rate will be restored. At peak 11 BIA referrals were requested in October. In May (when provider problems were at their worst) only 1 was referred – which was not sustainable for our business. Continuing to fund 9 BIA referrals per month is thought to be a reasonable budget request for 2024-5.

Similarly, the number of referrals for Mental Health Assessors made per month has fluctuated through the year. At peak demand Nottingham City Council referred 31 in July. When provider failure was at its worst in May only 19 were referred. On average 25 per month were referred but the projection is that business as usual will continue to be an average of 30 per month for 2024-5.

Table 2 provides figures for the budgets being requested in 2024-25

Table 2

Type of Assessment	Budget 2024-25	Incumbent provider's price per assessment	Approx. number of agency assessments expected to be required by 2024-2025
Best Interests Assessor	£48,516.84	£449.23	108
Mental Health Assessor	£80,982	£224.95	360

(This is to maintain waiting list and meet urgent demand only not to clear it).

This increased demand has occurred with 5 additional assessments per month required due to professional deputyship renewals and new referrals. This increase was already built into the budget set last year and this is included in the of number of referrals projected forward. However, there is a possibility that the re-opening of Nottingham City Council's internal deputyship team could increase referrals again. This will need to be kept under review and mitigating strategies are currently being developed.

The review also explored individual capacity and a deep dive of the internal team which identified issues such as management pressures and the impact on wider team capacity. The service tested the viability of a medium-term plan which focuses on increasing the use of and/or developing a larger bank of field BIAs from other teams.

The review identified two primary reasons to continue to externally source DoLS assessments.

1. To perform statutory functions which NCC are unable to carry out.

Mental Health Assessors are specialist doctors (referred to Section 12 Doctors). Section 12 approval means a doctor can recommend compulsory admission for assessment or treatment under the Mental Health Act 1983. Employing them directly is not an option as Local Authorities do not have the experience and infrastructure to directly employ doctors. An arrangement is therefore required to commission these services externally and will always be the case.

2. To perform functions which NCC does not currently have the capacity to carry out.

There is currently no sufficient BIA capacity within the NCC DoLS team to be able to adequately manage the demand for DoLS assessments. There would need to be a significant increase in the capacity of the DoLS Team and even if this were granted. There is a shortage of BIAs nationally, so it is unlikely to negate the need to externally source for this service.

The service has explored feasibility of increasing internal BIA staff through training. The training of new BIAs is via a University accredited programme (most locally provided at Nottingham Trent University) involving course fees and study days. This will involve some training expenditure (typically less than

£1,000 per candidate) and host teams release their staff for the six taught days and additional study days and supervised practice for the duration of the course.

Training takes place once or twice per year and can take 3 – 6 months to complete. After completion the DoLS team would offer some newly qualified BIA induction to support their participation on the rota. Any new recruits gained through this route will take a minimum of 9 months from selection to practicing as a BIA. Nottingham City Council plan to train 4 further internal BIAs but this will not produce increased capacity in the next financial year (2024-5).

Furthermore, service anticipate a negative impact to capacity across ASC as the staff would be transferred away from their substantive duties and their posts would need to be back filled.

There is no commitment to spend against this framework, as this is a payment by activity service. Therefore, the scale of the provision is led by the requirements from ASC. If alternative best value approaches are identified, then NCC has the option to end the current call off with the incumbent. The recent best value review of this provision did not identify any alternative options for delivery which can be undertaken at this time. The most viable alternative delivery option explored was the use of the NCC Matrix Agency framework.

Matrix SCM is a supply chain management company who act as a neutral vendor in the provision of agency workers to a wide range of customers across multiple sectors. Utilising the Matrix framework has been explored due to there being an existing to a pool of assessors registered with Matrix. However, the implications of using Matrix would negatively impact the DoLS team due to the capacity required to support the process.

A tender exercise was conducted in March 2023. In terms of economy the incumbent provider demonstrated best value, in relation to quality and price. There were no significantly cheaper prices offered by any of the other bidders. In general terms, market rate for BIA assessments has increased significantly nationally. The previous contract prices were set in 2018 and there had been no inflationary uplift throughout the life of the contract. The current rate is now reflective of the market cost of this service.

Since the implementation the incumbent provider was mobilised in April 2023, however they faced challenges around meeting our quality and time scale requirements. Contracting and commissioning have worked closely with the provider to support their performance through an improvement plan. Opportunities to strengthen the current call off contract have been identified such as setting more stringent KPIs around timeliness and quality, and the option to apply sanctions at our discretion. As a result, there is mutual agreement between NCC and the provider to amend the current call off and for the provider to work to and be monitored against these amendments.

To ensure that we continue to work within best value, a soft market test will be carried out to determine a variety of information to ensure best value remains, for example what the current availability/options are locally, how quickly mobilisation could occur, and what their costing structures are. The call off has been recommended for further call off for a total of 12 months on 6 months + 6 month basis from the Nottinghamshire County Council's 4-year DoLS Assessment Framework, with a review mid-point to ensure ID Medical remain the best option for NCC to continue working with.

Other Options Considered and why these were rejected

A Best Value analysis was undertaken with the DoLS Team, which analysed and evaluated the use of agency to provide DoLS assessments compared to Nottingham City Council's in-house and field assessors.

Matrix SCM is a supply chain management company who act as a neutral vendor in the provision of agency workers to a wide range of customers across multiple sectors. Utilising the Matrix framework has been explored, and although this could be beneficial due to a pool of assessors registered with Matrix already, the implications of using Matrix would negatively impact the DoLS team resources. If Matrix was implemented, the responsibility to source available assessors/allocate assessments (and reallocate if the assessor turned the assessment down), and monitor/manage the assessors would be held solely with the DoLS Team. DoLS team do not have the staff required to manage the amount of work required via Matrix.

Mental Health Assessors are specialist doctors who undertake DoLS assessment work, on a freelance basis. Employing them directly is not a viable option as Local Authorities do not have the experience and infrastructure to directly employ doctors. We do not have the necessary resources to offer clinical supervision, peer support or training in house and the regulatory checks and insurance costs would require new and disproportionate expenditure and expertise. There is a national shortage of doctors who are available and qualified to conduct mental health assessments. Of which, many do so on a part time basis to enjoy the flexibility of agency work.

Best Interest Assessors

In 2017 there were 17 "field work" BIAs on the DoLS rota. In 2023 this was reduced to nine, largely due to managers requesting that their team members be withdrawn from this work. Any option to increase numbers drawn from other teams needs to take account of the competing pressures and management priorities between services.

Currently Nottingham City Council have only 3 internal BIAs who are fully active on the rota (every 2 months), with a further 7 internal BIAs who participate on the rota with less frequency (every 2-3 months). Nottingham City Council received their first litigation which was issued November 2023 due to late completion of an externally sourced BIA assessment.

The level of participation of existing internal BIAs is a matter that needs to be kept under review in collaboration with the Service manager Julie Stevens. Currently two internal qualified BIAs are inactive on the rota at the request of their managers, and these have been agreed due to operational demands on their team.

A barrier to asking other teams to release more practitioners to participate on the rota is that only social workers who have successfully completed the University accredited post qualifying Best Interests Assessor module can perform this role. A medium-term option is to train new BIAs from the existing "field work" teams. Nottingham City Council has not trained any new in-house BIAs since 2016 and this might account for the shortfall in reserve capacity.

The training of new BIAs is via a University accredited programme (most locally provided at Nottingham Trent University) involving course fees and study days. This will involve some training expenditure (typically less than £1,000 per candidate) and host teams release their staff for the six taught days and additional study days and supervised practice for the duration of the course.

Training takes place once or twice per year and can take 3 – 6 months to complete. After completion the DoLS team would offer some newly qualified BIA induction to support their participation on the

rota. Any new recruits gained through this route will take a minimum of 9 months from selection to practicing as a BIA. Nottingham City Council plan to train 4 further internal BIAs but this will not produce increased capacity in the next financial year (2024-5).

The BIA qualification and continued practice is one of the Career Progression Pathway Framework routes to becoming a Level 4 (I Grade) Adult's Social Worker. In preparation for this option the Training, Development and Quality Assurance Team have been considering funding 3-4 new BIA candidates to complete the University accredited programme. Training would be offered only to select social workers seeking to progress to Level 4 Social Worker. A condition of their sponsorship would be that they complete a minimum of 6 assessments per year. If this option is fully implemented, it could reduce the number of Agency BIA referrals by as much as 18-24 per year. However, these benefits would not be gained until the next financial year.

provider NCC commissioned prior to ID Medical no longer have the infrastructure available to mobilise in order to meet the current demands required from NCC, and therefore would not be a viable option. ID Medical have historically underperformed with regards to the quality of and late submissions of assessments. However, since being on an improvement plan, they have worked relentlessly with the DoLS team and positive improvements are now notable. The new call off will strengthen this by implementing financial penalties on the provider should they not meet deadlines. Additional to this, the call-off ensures that it is a paid by assessment contract, and the annual call-off split into two 6-month periods to allow for detailed reviews to take place ensuring best value and practice.

The options explored were:

- Retendering – ID Medical may choose to not work with us once the tendering process starts, leaving the DoLS team at risk of significant assessment delays due to no other provision being identified. Further work needs to be done to establish what additional provision is available, which the soft market testing should assist with for future knowledge.
- Having an open framework of providers/assessors - this was considered but resources the management of this would require is not feasible for the DoLS team to take on.
- Using the councils Matrix system which already has a data base of independent assessors ready to use – this would create additional work for the DoLS team in seeking suitable assessors, managing them and the work. The DOLS team do not have the infrastructure to support this.
- Having a one year call off – by having two six months call off, it ensures ID Medical know we will be reviewing their performance after six months and ensuring best value continues to be met.

It is therefore recommended that Nottingham City Council continues to draw upon a mixed economy of BIA sources. The overall cost of employing additional BIAs in the DoLS Team to conduct assessments is greater even after considering the above inflation price increase for Agency BIAs.

It is recommended that Nottingham City Council continue to source Mental Health Assessors and Paid Representatives from an external Agency.

Therefore, we seek agreement to call off further assessments up to the remaining value of up to £154,325.

Reasons why this decision is classified as operational

- The decision has a total value under £250,000

- The decision is within agreed policies and within the overall agreed budget controlled by the officer taking the decision

Additional Information

- **It is recommended that you seek and include finance advice where your decision has financial implications.**

Legal

There are no legal issues arising from the proposal for Nottingham City Council to call-off services from a pre-existing Framework Agreement from which it has previously called-off services and from which now additional support is required.

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Procurement

There are no procurement issues arising from this proposal to make a call off award under the Nottinghamshire County Council framework. Once awarded, details of the award should be supplied to the Procurement team in order to ensure recording and reporting obligations are met.

Jo Pettifor 01.02.2024

Finance

The DOLS assessments budget was planned to be increased as part of the budget rebase. This has now been completed and the new value is £154,325. This increase was to take account of the increased level of spend in prior years and the new requirement.

Joanna Jenkins
Interim Senior Commercial Business Partner
22.08.2023

Decision Maker (Name and Job Title)

Catherine Underwood - Corporate Director for People, CLT lead for people



28/3/2024

Scheme of Delegation Reference Number

Date Decision Taken
28/03/2024