

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:

2125

Author:

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Department:

Children and Families

Contact:

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Subject:

Deprivation of Liberty - Additional Resources

Total Value:

£198,830 (Type: Revenue)

Decision Being Taken:

Executive Decisions :-

1. Approve the acceptance of the Deprivation of Liberty Safeguards (DoLS) Grant of £165,330 in 2015/16 from the Department of Health (DoH).
2. Approve the spend of the DoLS Grant on the permanent Social Worker posts - 6 x FTE Social Work posts (G/H grade)

Non-Executive decision, taken by the Corporate Director under Delegation 16: To establish the posts identified above.

Reasons for the Decision(s)

The Mental Capacity Act imposes a duty upon local authorities to ensure that citizens who lack the mental capacity to make decisions in regard to where they live are not unlawfully deprived of their liberty. This involves ensuring that the DoLS are followed for all citizens in those circumstances. This duty falls entirely upon the local authority.

Up until March 2014 the Council was adequately resourced to undertake this duty. However, on 19th March 2014 the Supreme Court ruled on two cases: P v Cheshire West & Chester Council, and P & Q v Surrey County Council. These judgements significantly widened the remit of where a deprivation of liberty can occur. This has meant that the DoLS team has seen a 700% increase in referrals.

In addition to the Supreme Court judgment there has been another significant judgement in February 2015: AJ vs A Local Authority. This has increased the likelihood that paid representatives will submit requests to the Court of Protection (COP) to pass judgement on the legitimacy of an authorised Deprivation of Liberty. Each application to the COP creates a considerable amount of detailed, time-consuming work which can only be completed by a Social Worker.

In order to meet the statutory duties of the Council and minimise both reputational risk and risk to citizens it was previously agreed to temporarily increase the number of full time Best Interest Assessors (BIA) by 4 . BIA is the name given to Social Workers who have had additional training and are therefore qualified to undertake Best Interest Assessments. These assessments determine / authorise deprivations of liberty.

Whilst permanent funding arrangements are still being considered by central government, demand for this kind of Social Worker will remain high. These roles are highly specialised and recruitment will be challenging. Transferring the existing 4 Social Worker fixed-term posts to permanent will ensure the local authority can continue to meet its statutory responsibilities. In order to meet the additional demands created by the 'AJ' ruling it is necessary to create an additional permanent BIA post and a Social Work post to specifically deal with the Court of Protection work.

Other Options Considered:

Option 1: With regard to the existing DoLS team: consideration has been given to managing with the current BIA / Social Work resources. It is now evident that to try this would create unacceptable levels of risk in regard to the Council's reputation and to individual citizens (not recommended).

Option 2: Recruit to the additional Social Worker posts on a fixed-term contract. Whilst this would in theory allow the local authority to meet its statutory responsibilities, current recruitment challenges would result in these posts remaining vacant (not recommended).

Option 3: Recruit to the additional Social Worker posts on a permanent basis. This would ensure the fulfilment of the local authority's statutory responsibilities. Should the level of funding not be sufficient to support these posts going forward vacancy management processes will be used to manage the impact on the overall social care establishment (recommended).

Background Papers:

None

Published Works:

None

Affected Wards:

Citywide

**Colleague / Councillor
Interests:**

No significant impact on any one ward

Consultations:

Those not consulted are not directly affected by the decision.

**Crime and Disorder
Implications:**

Not applicable.

Equality:

EIA not required. Reasons: It would not be proportionate to complete an EIA on a decision of this nature. This is an extension of an existing service.

Decision Type:

Portfolio Holder

Subject to Call In:

Yes

Call In Expiry date:

17/08/2015

Advice Sought:

Legal, Finance, Human Resources, Equality and Diversity

Legal Advice:

I would echo the comments in the background regarding the legal changes following the rulings referred to. Although in a technical sense the Cheshire West ruling simply clarified the existing law, the reality was that this has substantially lowered the threshold for when an arrangement would be considered a deprivation of liberty. Nationally, the evidence suggests that this has increased the numbers of such arrangements by a factor of ten.

There are very strict legal requirements associated with the deprivation of liberty safeguards. It is necessary for Nottingham City Council to take all reasonable steps to ensure compliance at every stage and I would advise that the decision represents an important component of the measures being taken to ensure compliance with the Council's legal duties in this area.

More detailed advice can be given in respect of the specific impact of the various developments in the law, but it is felt that the above provides sufficient overview to support a final decision being taken. Advice provided by Gordon Clow (Senior Solicitor) on 21/07/2015.

Finance Advice:

See attached for financial advice. Advice provided by Darren Revill (Finance Analyst) on 05/06/2015. Advice provided by Darren Revill (Finance Analyst) on 23/07/2015.

Advice documents: Deprivation of Liberty - Additional Resources Financial Comments.doc

HR Advice:

If agreed to appoint on a permanent basis then the existing fixed term employees should be offered the roles on a permanent basis in accordance with the Fixed Term to Permanent policy in the People Management Handbook. Management are also recommended to take account of any exit arrangement or costs, in terms of redundancy and potential release of pension benefits, should the posts be deleted at a later date. Recruitment to any vacant post should be in accordance with the authority's resourcing policy.

Mandy Marshall
Service Redesign Consultant
20/07/2015

Equality and Diversity Advice:

There are no significant equalities issues with this proposal beyond ensuring that the activity provides and extends the possibility of equality of opportunity for some of our most vulnerable citizens.

Advice provided by Adisa Djan (Equalities and Diversity Consultant) on 20/07/2015.

Signatures

Alex Norris (PH for Adults, Health and Community Sector)

SIGNED and Dated: 10/08/2015

Alison Michalska (Corporate Director for Children and Adults)

SIGNED and Dated: 10/08/2015