

## **Cabinet**

**29 October 2024**

### **Gateway 1 Report: Deprivation of Liberty Safeguards (DoLS) Assessments**

Portfolio Holder: Councillor Teresa Murray, Deputy Leader of the Council

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#### Procurement Overview

Total Contract Value (estimated): £1,323,000

Regulated Procurement: Yes

Proposed Contract Term: Three years, with the option to apply three further two-year extensions.

#### Summary

This report seeks permission to commence the procurement of the Deprivation of Liberty Safeguards (DoLS) Contract.

#### 1. Recommendation

1.1 The Cabinet is asked to agree to pursue the procurement of a contract provision of specialist doctor/mental health assessments as one of the six elements of a Deprivation of Liberty Safeguard (DoLS) Assessment as per the preferred option identified in paragraph 7.4.

#### 2. Suggested reasons for decisions

2.1. The local authority is the supervisory body for the provision of DoLS assessments.

2.2. There is a requirement in the Mental Capacity Act (MCA) DoLS legislation that the Mental Health assessment is undertaken by a Section 12 Registered (S-12) doctor.

2.3. Medway Council does not employ S-12 doctors so there is a need to source an external provider to undertake these assessments.

### 3. Budget and Policy Framework

- 3.1. As a statutory requirement this contract complies with the Council's budget and policy framework.
- 3.2. The previous contract came to an end in August 2023.
- 3.3. Currently services are purchased under the previous contractual conditions, including price.

### 4. Background Information and Procurement Deliverables

- 4.1. Deprivation of Liberty Safeguards (DoLS) are an amendment to the Mental Capacity Act (MCA) 2005. The DoLS under the MCA allows restraint and restrictions that amount to a deprivation of liberty to be used in hospitals and care homes, but only if they are in a person's best interests. To deprive a person of their liberty, care homes and hospitals must request standard authorisation from a local authority, the supervisory body.
- 4.2. There are six assessments necessary to satisfy the requirements of the MCA DoLS, these are: Age, Mental Capacity, Mental Health, Eligibility, Best Interests, and No Refusals (the authorisation cannot contradict or conflict with any advance decision the person has made refusing treatment).
- 4.3. Most of the assessments can be carried out in-house by Best Interest Assessors (BIAs), however, the Mental Health and Best Interest aspects must be carried out by different assessors, with the Mental Health assessor being a doctor (who must be approved under section 12 of the Mental Health Act 1983, or a registered medical practitioner with at least three years' post-registration experience in the diagnosis or treatment of mental disorder).
- 4.4. The purpose of this contract is to commission an organisation to provide the Mental Health Assessments which must be carried out by a Section 12 registered (s-12) doctor. Medway Council commissioned the current provider, South East Memory Assessment Services (SEMAS Ltd), in 2018 to provide the Mental Health assessments from 1 August 2018 on a three-year contract with options to extend for two further years.
- 4.5. DoLS were due to be replaced by the Liberty Protection Safeguards (LPS) which were enacted by Parliament as part of the Mental Capacity (Amendment) Act 2019. However, implementation of the LPS has been postponed several times. On 5 April 2023, the government announced that the implementation of LPS would now be delayed "beyond the life of this Parliament".
- 4.6. The contract requires the provider to carry out the Mental Health assessment within a set time frame (7 days), for a set price. The current provider, SEMAS, has a pool of registered doctors that it is able to call on to provide the

assessments. This pool of registered doctors extends beyond Medway into Kent, Essex and Sussex.

## 5. Parent Company Guarantee/Performance Bond Required

- 5.1. Not required, as each individual assessment is likely to cost less than £250 and will be paid on a case-by-case basis after the service has been received. In the event of provider failure, the DoLS team will be able to liaise directly with the registered doctors to ensure that DoLS assessments continue.

## 6. Procurement Dependencies and Obligations

### 6.1. Project Dependency

- 6.1.1. This project does not depend on other projects, nor does it have projects dependant on it.

### 6.2. Statutory/Legal Obligations

- 6.2.1. Medway Council, as the local authority, is the supervisory body in the authorisation of deprivation of an individual's liberty in a hospital or a care home. As such, the provision of a Deprivation of Liberty Safeguards (DoLS) service is a statutory obligation.

### 6.3. Procurement Project Management

- 6.3.1. The management of this procurement process will be the responsibility of the Category Management team.

### 6.4. Post Procurement Contract Management

- 6.4.1. The management of the contract will be the responsibility of the Head of Adult Partnership Commissioning and the BCF, and usually delegated to a Commissioning Officer.
- 6.4.2. To ensure the needs of the requirement are met and continuously fulfilled post award, the following KPIs will be included in the tender and will form part of any subsequent contract.

#	Title	Short Description	%/measurement criteria
1	Response Time	To carry out assessment within agreed timeframe.	95%
2	Return Time	To submit completed assessments withing agreed timeframe to satisfactory standard.	95%

## 7. Market Conditions and Procurement Approach

### 7.1. Market Conditions

7.1.1. Current market conditions indicate a good level of interest within the marketplace. Commissioners are confident that providers will tender for the opportunity.

### 7.2. Procurement Options

7.2.1. The following options were considered and analysed for this report:

**Option 1 – Do nothing:** Discounted as an option, due to DoLS being a statutory requirement.

**Option 2 – Extend the current contract:** There are no further options to extend current contract.

**Option 3 – Utilise a framework/DPS:** A framework contract or Dynamic Purchasing System (DPS) would mean approving two or more providers to deliver the contract. Management of this would be resource heavy and it is unlikely that the value of each assessment is enough to sustain such an arrangement (i.e. more than one contracted provider).

#### **Option 4 – Open Market Procurement**

7.2.2. Open Procedure: Given the limited number of suppliers in the market this would be the most appropriate procedure and would give any supplier the opportunity to bid.

7.2.3. Restricted Procedure: This is a two-stage procedure designed to filter down the number of bidders at a pre-qualification stage. As the number of potential bidders is already quite small this procedure is not deemed to be viable.

7.2.4. Competitive Dialogue: Competitive dialogue is a process within procurement tendering that facilitates a dialogue with suppliers to help them better understand the specific requirements of a contract. The requirements of this opportunity are already clearly defined, so a competitive dialogue is not appropriate for this procurement.

7.2.5. **Option 5 – Other:** Other methods of procurement exist, but due to the relatively simple nature of this contract, any other vehicle would likely be excessive and overcomplicated.

### 7.3. Contractual synergies

7.3.1. The Local Authority is the Responsible Body for conducting DoLS assessments. Due to the nature of this contract, there are no similar contracts in place and so there are no contractual synergies that can be made.

### 7.4. Advice and analysis

7.4.1. The preferred option is Option 4 – set out at paragraph 7.2.2.

7.4.2. The Cabinet is requested to approve a three-year term, which could then be extended three times by two years,

## 7.5. Evaluation Criteria

7.5.1. Tender submissions will be evaluated based on 60/40% ratio of quality and price.

7.5.2. Officers propose to evaluate bidders against the following quality criteria within the tender.

#	Question	Weighting (%)	Purpose
1	Describe the method and approach to meeting the statutory deadlines within the specification of requirement.	18%	To meet the statutory requirements.
2	Describe how would you provide and maintain a person-centred approach to assessments particularly when there are a high volume of cases.	12%	To be in line with Council Values.
3	Describe your approach to equality and diversity in the provision of services.	12%	To be in line with Council Values.
4	Describe the processes you have in place to manage human resource matters in relation to section-12 doctors; including training updates for DOLS, continuous improvement of professional standards and development, vetting/barring, safeguarding vulnerable children and adults, professional registrations, work permits and visas for working in the UK.	9%	Safeguarding vulnerable adults.
5	How will you ensure data is securely stored and electronically transmitted to Medway Council.	9%	Data security.

## 8. Risk Management

8.1. The table below shows the risks and mitigations that have been identified for this project:

Risk	Description	Action to avoid or mitigate risk	Risk rating
Lack of competition at	Limited number of tenders received.	Have a minimum on 3 applications, if this is not achieved, only award	B III

Risk	Description	Action to avoid or mitigate risk	Risk rating
contract award stage.		contract after further consultation.	
Provider failure	Provider unable to fulfil its contractual obligations, either operationally or financially.	Ongoing contract monitoring will provide information regarding financial viability. Operationally, the Local Authority will hold details of the s-12 doctors so will approach them directly whilst identifying new provider.	CIII
Data security	Data loss or a breach of the data protection protocols. The DoLS Service and provider require the use of a secure email system, currently nhs.net is used for this purpose.	The DoLS Service and provider are required to use a secure email and data transfer platform; currently nhs.net is used for this purpose. Continue to use the NHS email system for communication between local authority and provider.	C III

For risk rating, please refer to the following table:

Likelihood	Impact:
A Very likely B Likely C Unlikely D Rare	I Catastrophic II Major III Moderate IV Minor

## 9. Consultation

- 9.1. Throughout the lifetime of the contract and during the procurement process close liaison with the Operations Manager for Specialist Services is undertaken to ensure that the DOLS (Deprivation of Liberty) team and the AMPH (Approved Mental Health Professional) team are satisfied that this statutory provision is delivered as stipulated in the contract. This liaison also ensures that routine opportunity is provided for teams to feedback on how the service is being delivered on the ground.

## 10. Service Implications

### 10.1. Financial Implications

10.1.1 The procurement requirement and its associated delivery as per the recommendations will be funded from existing revenue budgets. The current budget for DOLS expenditure with external parties is £240,000 which includes expenditure on Section 12 Doctors assessments and external BIAs. In recent years expenditure on the Section 12 Doctors assessments contract has been in the region of £120,000, therefore if activity is as forecast, there is the possibility of an increase in that cost by around £25,000-30,000 per annum. This may lead to an overspend on the current budget depending on the use of external BIAs.

### 10.2. Legal Implications

10.2.1 This procurement activity will be above the Find a Tender (FTS) threshold and therefore an FTS notice will be required.

10.2.2 The procedure gives a high degree of confidence that the Council's primary objectives for procurement are met, as required by Rule 2.2 of the Council's Contract Procedure Rules ("the CPRs").

10.2.3 Under the Council's Contract Procedure Rules, the procurement is a Process 3 procurement (Rule 18), and the process set out in this report meets the requirements for such procurements. The procurement will be advertised on the Kent Business Portal, in compliance with rule 18.4 of the CPRs.

10.2.4 Medway Council has the power under the Local Government (Contracts) Act 1997 and the Localism Act 2011 to enter into contracts in connection with the performance of its functions.

10.2.5 The process described in this report complies with the Public Contracts Regulations 2015 and Medway Council's Contract Procedure Rules.

10.2.6 This report has been presented as a Process 3 procurement, and therefore the report must be presented to Cabinet.

### 10.3. TUPE Implications

10.3.1. TUPE does not apply to this requirement.

### 10.4. Procurement Implications

10.4.1. The current contract has expired so a procurement process is required to renew the contract. The 2023 Procurement Act has been delayed until 24 February 2025 so on the basis that the procurement process begins before this date then the process will be regulated under the current Public Contracts Regulations 2015.

### 10.5. ICT Implications

10.5.1. There are no ICT comments for this report.

## 10.6. Climate Change implications

- 10.6.1. The provider should source Section 12 doctors close to the assessment location to limit unnecessary traveling and promote the use of public transport where possible.
- 10.6.2. New vehicles purchased by the provider for the delivery of this contract must be electric.

## 11. Social, Economic & Environmental Considerations

- 11.1. In line with Medway Council's Social Value Policy, officers will include the following standard outcomes and measures (the units have also been included for illustrative purposes) within the tender. Whilst there will be no commitment for bidders to deliver against every line, the accumulative value provided by each bidder will be scored and form part of the price evaluation score.
- 11.2. The Social Value commitment from the winning bidder will be transposed into contractual KPIs.

<b>Outcomes</b>	<b>Measures</b>	<b>Standard Units</b>
More local people in employment	No. of local direct employees (FTE) hired or retained (for re-tendered contracts) on contract for one year or the whole duration of the contract, whichever is shorter	No. people FTE
More local people in employment	Percentage of local employees (FTE) on contract	%
Improved skills	No. of staff hours spent on local school and college visits e.g. delivering careers talks, curriculum support, literacy support, safety talks (including preparation time)	No. staff hours
Improved skills	No. of weeks of apprenticeships on the contract that have either been completed during the year, or that will be supported by the organisation until completion in the following years - Level 2,3, or 4+	No. weeks
More opportunities for local MSMEs and VCSEs	Total amount (£) spent in LOCAL supply chain through the contract	£
More opportunities for local MSMEs and VCSEs	Meet the buyer' events held to highlight local supply chain opportunities	£ invested including staff time



Outcomes	Measures	Standard Units
Social Value embedded in the supply chain	Percentage of contracts with the supply chain on which Social Value commitments, measurement and monitoring are required	%
Creating a healthier community	Initiatives taken or supported to engage people in health interventions (e.g. stop smoking, obesity, alcoholism, drugs, etc.) or wellbeing initiatives in the community, including physical activities for adults and children	£ invested including staff time
Carbon emissions are reduced	Savings in CO2 emissions on contract achieved through de-carbonisation (specify how these are to be achieved)	Tonnes CO2e
Sustainable Procurement is promoted	Percentage of procurement contracts that includes sustainable procurement commitments or other relevant requirements and certifications (e.g. to use local produce, reduce food waste, and keep resources in circulation longer.)	% of contracts
Social innovation to create local skills and employment	Innovative measures to promote local skills and employment to be delivered on the contract - these could be e.g. co-designed with stakeholders or communities, or aiming at delivering benefits while minimising carbon footprint from initiatives, etc.	£ invested - including staff time and materials, equipment or other resources

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## Appendices

Exempt Appendix 1 – Financial Analysis

## Background Papers

[Mental Capacity Act 2005](#)

[The Mental Capacity \(Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence\) Regulations 2008](#)

[Law Commission's recommendations to abolish DoLS and replace with Liberty Protection Safeguards](#)