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**DEPRIVATION OF LIBERTY SAFEGUARDS (DoLS) UPDATE**

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**Purpose of the Report**

1. To provide an update on the impact of the Supreme Court Judgment decision in relation to Deprivation of Liberty Safeguards.

**Background**

2. New provisions were added to the Mental Capacity Act 2005 in April 2009 as part of the Mental Health Act (MHA) 2007 known as the Deprivation of Liberty Safeguards (DoLS). The DoLS are a legal framework, other than under MHA, that exist to ensure that individuals who lack the mental capacity to consent to the arrangements for their care, where such care may (because of restrictions imposed on an individual's freedom of choice or movement) amount to a "deprivation of liberty" (DoL), have the arrangements independently assessed to ensure they are in the best interests of the individual concerned.
3. The Local Authority has the legal responsibility as Supervisory Body for the assessment and granting, or otherwise, of all DoL authorisations received from Managing Authorities in our areas and for out of area placements.
4. If an individual is deprived of their liberty and they are not living in a care home or hospital (i.e. they are living in supported living arrangements, own tenancy) then an application needs making to the Court of Protection (CoP) for the authorisation.

**The Supreme Court Judgement: A Brief Overview**

5. The Supreme Court on 19 March 2014 overturned the Court of Appeal in the cases of P (by the Official Solicitor) v Cheshire West and Chester Council, and P & Q (or MIG & MEG) (by the Official Solicitor) v Surrey County Council [2014] UKSC 19. In what is the most far-reaching human rights case heard in the UK for a decade, the Supreme Court reversed the Cheshire West decision by 7 Justices to 0, and Surrey decision by 4 to 3.
6. The Supreme Court judgement clarified an "acid test" for what constitutes a DoL under Article 5 of the European Convention on Human Rights (ECHR).
7. The acid test states that an individual who lacks the capacity to consent to the arrangements for their care and is subject to continuous supervision and control and is not free to leave their care setting, is deprived of their liberty and should be the subject of a DoLS application (where they are in a care home or hospital setting).

- The Supreme Court also ruled that the individual's objection to the arrangements that amount to a deprivation of liberty is not a relevant consideration (even if the individual is not objecting, a DoLS application is required). The Judgment marked a significant change to established practice.

### Further Developments in DoLS system

- The AJ Ruling - In AJ vs a Local Authority case, a Court of Protection ruling on 10th February 2015 has left councils struggling to find family members to support people lacking capacity to challenge decisions made about their care under the DoLS, and forcing them to turn to paid professionals to take on the role of relevant person's representative (RPR) for people subject to the DoLS.
- This consultation considers how the law should regulate DoLS involving people who lack capacity to consent to their care and treatment arrangements; it is not only limited to Article 5 matters (rights to liberty), but also entail by its nature a limitation on Article 8 rights to private and family life.

### Implications for Practice

- The Supreme Court Judgment in effect lowered the threshold which means that a significant amount of individuals will now be deprived of their liberty. This test applies to all adults over the age of 18 who lack mental capacity, but will also apply to children aged 16-18 who lack mental capacity. This means more authorisations will be needed. The Local Authority have received, and will receive more requests for authorisation under the DoLS process and will also need to make more applications to the Court of Protection.
- The fees associated with an application to the Court of Protection are £400 application fee and a £500 hearing fee, and there are likely to be other associated costs, which may include instruction of Barristers and experts, as required.
- Following the AJ case ruling this has added further pressure to the DoLS system which was already under significant strain from the tenfold increase in cases triggered by the Supreme Court Judgment. Furthermore, the advocacy services from which paid RPRs are drawn are under severe pressure themselves, as they too are in short supply.

### Update

- Table below shows the number of applications and outcomes on yearly basis:-

	2012-13	2013-14	2014-15
Granted	37	57	753
Not Granted	28	40	161
Total	65	97	914

15. Table below compare the difference and percentage increased by yearly basis:-

	2012-13	2013-14	2014-15
Difference	7	32	817
Percentage Increased	12	49	842

16. Following the Supreme Court judgement from April 2014 to 31-03-2015, there have been 914 applications.
17. This shows an 842% increase in comparison to the previous financial year 2013-14.
18. There will also be an increase in the applications that need to be made to the Court of Protection.
19. This increased workload has caused operational pressures. Alongside this is the impact on Senior Managers who are required to be signatory for the cases, as each assessment needs to be read and understood prior to sign-off; each case can take up to an hour to complete.

### **Recommendation**

20. It is recommended that Scrutiny note the contents of this update and the implications.

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