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**DEPRIVATION OF LIBERTY**

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**SUMMARY REPORT**

**Purpose of the Report**

1. To provide an update on Deprivation of Liberty Safeguards (DoLS) and Deprivation of Liberty in supported living and home environments, including outcomes for people.

**Summary**

2. DoLS came into force in England and Wales on 1 April 2009. They were introduced as amendments to the Mental Capacity Act 2005 (MCA) via the Mental Health Act (MHA) 2007). They were a response to a breach of the European Convention on Human Rights (ECHR). The ECHR found that UK law did not give adequate protection to people who lacked mental capacity to consent to care or treatment and who required some restrictions on their liberty to keep them safe.
3. DoLS are a legal framework which exists 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", have the arrangements independently assessed to ensure they are in the best interests of the individual concerned.
4. The Local Authority has a statutory responsibility as Supervisory Body for operating and overseeing the MCA DoLS. This includes assessing and granting, or otherwise, of all DoLS authorisations received from Managing Authorities. The Managing Authority is the person or body with management responsibility for the hospital or care home in which a person is, or may become, deprived of their liberty. It is the responsibility of the Managing Authority to request authorisation of DoLS and to implement the outcomes, comply with any conditions and monitor the Relevant Person's Representative (RPR) contact with the individual.

**Recommendation**

5. It is recommended that :-
  - (a) Scrutiny note the content of this update and the implications.

**Suzanne Joyner**  
**Director of Children and Adult Services**

**Background Papers**

None

Philip Haselhurst : Extension 6460

S17 Crime and Disorder	There are no crime and disorder implications in this report
Health and Well Being	The information is likely to impact on the health and wellbeing of Darlington residents who are being considered for a care home.
Carbon Impact	There are no carbon impact implications in this report
Diversity	The subject applies to all individuals being considered for a care home.
Wards Affected	There are no wards identified as being particularly impacted upon in this report
Groups Affected	Individuals who are considering use of a care home
Budget and Policy Framework	This report does not represent a change to the budget and policy framework.
Key Decision	This is not a Key decision
Urgent Decision	This is not an urgent decision.
One Darlington: Perfectly Placed	This decision will not contribute to the aim of One Darlington: Perfectly Placed
Efficiency	This decision will not impact on the efficiency of the Council.
Impact on Looked After Children and Care Leavers	There is no impact on looked after children or care leavers

**MAIN REPORT**

**Information and Analysis**

6. On 19 March 2014 the Supreme Court overturned the Court of Appeal in the cases of P v Cheshire West Council and P & Q v Surrey County Council [2014].
7. The Supreme Court Judgement referred to the “acid test” to determine whether a person is being deprived of their liberty. This consists of two questions:
  - (a) Is the person subject to continuous supervision and control?
  - (b) Is the person free to leave?
8. If the person meets both these criteria then they are being deprived of their liberty.

9. The Supreme Court Judgement in effect lowered the threshold for what constitutes a DoL. This resulted in a significant increase in the number of requests for authorisations as more individuals met the criteria for being deprived of their liberty. This is reflected in the figures below.
10. Since the Supreme Court Judgement there has been a tenfold increase in applications across England and Wales.

### **Darlington Figures**

	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Granted	40	57	755	800	744	605 (to December)
Not granted	29	40	161	193	61	33 (To December)
Total	69	97	916	993	805	638

11. There were an additional 200 requests received for 2017/18 which did not proceed for various reasons including: incorrectly referred to DBC (should have been a different local authority), review requests, admitted to hospital, person had moved back home, admitted to hospital, discharged from hospital or had died.
12. The total of DOLS requests for 2017/18 to date equals 838. This is the total number of requests received for the year. The above column only includes the requests that progressed to an outcome of either granted or not granted.

### **Challenges**

13. Due to the increase in the number of requests for authorisation, additional resources have been required to ensure that all necessary work is completed within timescale. If authorisations are not completed within timescales then the Local Authority is failing to meet its statutory obligations and this could place the Local Authority at risk of legal challenge. This might include judicial review or financial penalties as well as damage to reputation.
14. In order to avoid this Darlington Borough Council have taken a proactive approach to manage requests for authorisations with the aim being to complete as many as possible within timescales.
15. There are currently three full time, permanent BIA's employed by Darlington Borough Council. Other BIA's participate on a rota system from other teams, this includes eight members of staff.
16. The north east region had 995 DOLS applications per 100,000 adult population, which is more than double the England average of 492 per 100,000. One of the contributing factors was the supervisory bodies in the north east granting authorisations for shorter periods of time requiring more frequent applications.
17. There has been a significant impact on the budget for Deprivation of Liberty as we have had to use Independent Best Interest Assessors (BIAs) in order to respond to

the volumes of work. The alternative would be leaving people unlawfully deprived of their liberty. In addition there is a cost for Mental Health Assessors as all DoLS also require assessments to be carried out by them. The costs prior to Cheshire West in 2013/14 and in subsequent years are shown below:

	2013/14	2014/15	2015/16	2016/17	2017/18 (to date)
Independent BIA's	0	£84,442.84	£108,441.33	£154,141.84	£98,700.83
Mental Health Assessors	£56,653.90	£125,052.00	£138,420.54	£162,814.57	£88,305.44

18. There has been a plan in place working towards reducing this cost by limiting our reliance on independent BIAs. This includes making better use of the BIAs within Darlington Borough Council, training more social workers. Further reductions could be made following consideration of employing one further BIA.

### **Deprivation of Liberty in settings other than care homes or hospitals**

19. The Deprivation of Liberty Safeguards cannot be used in settings other than care homes or hospital. However, people can still be deprived of their liberty in other settings, such as supported accommodation or within their own home. In these situations an application has to be made to the Court of Protection (COP) for the deprivation to be considered and authorised if appropriate.

### **Examples from BIA Cases**

20. A person was found to have capacity and all restrictions that the care home had placed on them were lifted with no negative consequences and the person chose to remain in the care home but with a better quality of life.
21. Identified that an individual was placed in a care home that was not suitable and that they were at greater risk of harm because of this. The BIA was able to recommend that an alternative placement should be found resulting in the person moving to a more suitable placement and the risk of harm removed.
22. A BIA found the financial arrangements in place were leaving the person vulnerable to financial abuse and unnecessary financial outlay. A safeguarding adults concern was raised which was investigated by the local authority. As a result of this investigation actions were taken to remove the risk of further financial abuse.
23. A BIA was concerned about use of antipsychotic medication to manage behaviour and requested a review of medication which considered whether there was a less restrictive option.

24. Numerous cases where BIAs identify when a person is objecting to their placement which then triggers a referral to Court of Protection for them to decide if the person should remain in that placement or not. Had BIAs not identified this then the person would not have had their cases heard in COP.

### **Advocacy**

25. The Relevant Person's Representative role is a crucial part of the DoLS to protect the right of the individual. This role offers representation, support or protection for the individual and their family to give them a voice within the system. This includes supporting challenges to authorisations or conditions. In Darlington for the authorisations granted for the period 2017-18 (to date), 183 cases have been represented by a paid advocate as there was not an appropriate family member to take on this role.

### **Law Commission Review of DoLS**

26. It was recognised that the current DOLs is poorly drafted and overly complicated and a review was commissioned. The next stage of the Law Commissions proposals for the review of DoLS, publication of the Commission's final report and draft legislation, has been published. Implementation from government is currently outstanding.