

DEPRIVATION OF LIBERTY UPDATE

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, all DoLS authorisations received from a 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 that Scrutiny note the content of this update and the implications

Suzanne Joyner
Director of Children and Adults Services

S17 Crime and Disorder	No impact
Health and Well Being	Positive impact
Carbon Impact	No impact
Diversity	No impact
Wards Affected	All
Groups Affected	All
Budget and Policy Framework	No additional budget or policy implications
Key Decision	No
Urgent Decision	No
One Darlington: Perfectly Placed	Aligned
Efficiency	No Impact
Impact on Looked After Children and Care Leavers	No impact

MAIN REPORT

Information and Analysis

The Supreme Court Judgement

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 DoLS. 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	2018-19
Granted	40	57	755	800	744	841	282 to 20 July 2018
Not granted	29	40	161	193	61	45	15 to 20 July 2018
Total	69	97	916	993	805	886	297

11. There were an additional 204 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 number of DOLS requests for 2017/18 was 1,090 including the cases which did not proceed to authorisation. 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. In addition nine other BIA's employed by Darlington Borough Council who work in other adult social care teams participate on a rota system. These staff are allocated either one or two cases per month depending on their job role.
16. At a national level, the annual report for 2017-18 is not due to be published until October 2018, but it is expected to show an increase in activity. For the year 2016-17 there was an 11% increase nationally for DoLS applications.
17. The north east region had 995 DOLS applications per 100,000 adult population. The North East is more than double the England average of 492 per 100,000 for DOLS applications.
18. Analysis of this data showed that local authorities in the North East received more applications per individual compared to other regions. 23% of individuals in the north east region received more than one DoLS application during the year, compared with 14% nationally. The proportion of authorisations granted during the year for less than 90 days duration was 24% in the north east as compared to 17% nationally. Subsequently the greater numbers of applications received in the North East region compared to other regions can be partially ascribed to supervisory bodies granting authorisations for shorter lengths of time, thereby requiring more frequent applications as each authorisation ceases.
19. There has been a significant impact on the budget for Deprivation of Liberty as it has involved using independent Best Interest Assessors (BIAs) at a considerable cost but 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
Independent BIA's	0	£84,442.84	£108,441.3 3	£154,141.8 4	£140,048.0 2

Mental Health Assessors	£56,653.90	£125,052.00	£138,420.54	£162,814.57	£143,434.24
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For the year 1 April 2018 to 20 July 2018 the figures to date are:

- Independent BIAs: £36,780.30
- Mental Health Assessors: £29,116.28

20. 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 and training more social workers. Further reductions could be made following consideration of employing one further BIA and a business case has been put forward for this which would considerably reduce the need to use independent BIAs.

Deprivation of Liberty in settings other than care homes or hospitals

21. 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.

Advocacy

22. 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 the authorisations granted for the period 1 April 2017 – 31 March 2018, 216 cases have been represented by a paid advocate as there was not an appropriate family member to take on this role. In the year to date from 1 April 2018 to 20 July 2018 this number is 73. It should be noted that these are based on the number of authorisations during the time periods and some individuals could have had more than one authorisation during this period and the paid RPR role would continue.

Law Commission Review of DoLS

23. The government tasked the Law Commission to review the Deprivation of Liberty Safeguards. In 2017 the Law Commission found that there was a compelling case to replace the DoLS scheme. As a result the Law Commission recommended that the DoLS scheme be replaced with a new regime termed the Liberty Protection Safeguards.

24. The Mental Capacity (Amendment) Bill is intended to implement/amend these reforms and was first introduced to the House of Lords on 3 July 2018 with a second reading on 16 July 2018.

