



ADULTS AND COMMUNITIES OVERVIEW AND SCRUTINY COMMITTEE
2 SEPTEMBER 2019

DEPRIVATION OF LIBERTY PROTECTION SAFEGUARDS

REPORT OF THE DIRECTOR OF ADULTS AND COMMUNITIES

Purpose of report

1. The purpose of this report is to provide the Committee with an update on how the Deprivation of Liberty Safeguards (DoLS) Service manages the assessment and authorisation process for individuals whom require DoLS authorisation.
2. The Committee will also receive a summary of the key changes regarding the implementation of Liberty Protection Safeguards which are due to replace the current DoLS on 1 October 2020.

Background

Current situation

3. The County Council receives an average of 1,000 DoLS referrals each quarter from residential/nursing homes and hospitals for assessments to establish if a person is subject to a deprivation of their liberty; that the support they receive is the least restrictive option; and that such support is in their best interest.
4. As part of a Service Level Agreement, the County Council's DoLS Service also manages Rutland Council's assessments and authorisations. The referrals for Rutland Council are approximately 50 per quarter.
5. Since the 2014 Supreme Court Judgement (Cheshire West) which clarified the threshold for what care and treatment amounts to an individual's deprivation of liberty, there has been a national backlog of assessments waiting to be completed.
6. In June 2018, the County Council, including Rutland Council's DoLS backlog figure was 1,316. There has been an emphasis on reducing this using independent Best Interests Assessors and the figure as at 16 August 2019 was 436. The DoLS Service will continue to take steps to clear this number in advance of implementation of LPS.
7. The Council will continue to apply the Association of Directors of Adult Social Care Services (ADASS) tool for triaging assessments and allocating them to Best Interests Assessors in order of priority.

Policy Framework and Previous Decisions - Legislative Change

8. In May 2019, the Mental Capacity (Amendment) Act was given Royal Assent. The Act makes changes to the way in which DoLS assessments and authorisations are undertaken and this will be known as the Liberty Protection Safeguards (LPS). Key points arising from this amendment include:

Topic	DoLS – Current requirements	LPS – Future requirements
Scope	Over 18's.	Applies to individuals over 16 who lack capacity to consent to the care arrangements and have a mental disorder.
Settings	Care homes and hospitals.	Wide range of settings – not limited to care arrangements in a care home or hospital setting.
Assessment and Authorisation Process	Different process for community and building based settings.	Single process for all settings.
Responsible organisation	Local authority is responsible for DoLS authorisations regardless of setting.	Will depend on the location of the care arrangements (for further details see paragraph 9 below).
Best Interests Assessor	Not all assessments will require a Best Interests Assessor, some may be completed by the staff involved in the delivery of the care a person receives, so long as they have sufficient skills and there is no conflict of interest.	Best Interests Assessors will convert to Approved Mental Capacity Professionals (AMCP). Individuals who are objecting to their residence, care and/or treatment will receive an assessment from an AMCP. All other assessments are expected to be completed by appropriately skilled health and social care professionals.
Advocacy	Independent Mental Capacity Advocates (IMCA) are instructed to support individuals who are un-befriended during the assessment process. Once the care arrangements are authorised the cared for person has either a Relevant Person's Representative (who can be a family member or friend) or a Paid Person's Representative (PPR) contracted by the local authority to provide advocacy and uphold their rights during the authorisation.	The Responsible Body is required to take all reasonable steps to appoint an IMCA to represent and support the individual while the arrangements are authorised or being proposed however there is no reference at present to the role of PPR. This suggests we will need to review our Contracts with the PPRs and IMCAs to be ready for this change.

9. The identity of the Responsible Body is determined as follows:

- If the arrangements are carried out mainly in an NHS hospital, the hospital manager will be the Responsible Body;

- If the arrangements are carried out mainly in an Independent hospital, the responsible local authority will be the Responsible Body;
 - If the arrangements are outside of a hospital setting but carried out mainly through the provision of NHS Continuing Healthcare by a Clinical Commissioning Group (CCG), the Responsible Body will be that CCG;
 - The responsible local authority for individuals where that local authority is responsible for the Education, Health and Care Plan; where the individual has needs for care and support which are being met under Part 1 of the Care Act 2014 and any circumstances where the individual receiving care is ordinarily resident within that local authority will be the responsible body for the purposes of the LPS.
 - Individuals who are objecting to their residence, care and/or treatment will receive an assessment from an AMCP. All other assessments are expected to be completed by appropriately skilled health and social care professionals.
10. The Code of Practice, which is expected to detail how the above will be implemented, has not yet been published. It is anticipated that a second draft will be released in spring 2020.

Anticipation of the New Legislation

11. In anticipation of the new legislation coming into force in October 2020 and supporting regulations, officers have begun considering how to prepare for and manage the changes.
12. It is worth noting that if the Code of Practice is not produced until Spring 2020, it is likely that the implementation date of the legislation could be delayed until Spring 2021 rather than October 2020.
13. ADASS have produced an information briefing on the types of considerations that should be included and this is helpful in scoping the County Council's requirements.

Resource Implications

14. Some Local Authorities have appointed Project Managers specifically for implementation of LPS. However, the County Council is going to assign this work to one of the existing DoLS Service Managers, as they have the knowledge of the current and proposed service requirements, working alongside the respective Assistant Director and Head of Service.
15. The County Council along with Leicester City Council chairs a Local Implementation Network (LIN) that was set up to manage the Mental Capacity Act 2005 and Deprivation of Liberty Safeguards Legislation in 2009. It is recognised that the Mental Capacity (Amendment) Act 2019 and Liberty Protection Safeguards will change the responsibility of Commissioners and so the Terms of Reference have been amended to include key partners. These are proposed to be approved by the Leicestershire, Leicester and Rutland (LLR) Safeguarding Adults Joint Executive Group, on 29 August 2019.
16. Key partners within the LIN will include representatives from each of the LLR local authorities, University Hospitals of Leicester NHS Trust (UHL), Leicestershire Partnership NHS Trust (LPT) and the CCGs. Officers hope to continue to have an

LLR approach to implementation and share Care Providers, AMCPs and Advocacy Services.

17. To scope the impact that the change of responsibility will have for Commissioners, currently we are triaging all the referrals received by type, as well as priority assessments and authorisations which would become the responsibility of hospital managers and CCGs when LPS is implemented.
18. As of 16 August 2019, there were 436 new referrals waiting to be assessed; 146 of these individuals are being cared for in an NHS hospital setting; 121 in UHL and 25 in LPT. There were 18 referrals that are the responsibility of Rutland Council.
19. There is currently a Service Level Agreement between the County Council and Rutland Council. The two local authorities are beginning to meet to discuss the impact that LPS may have on this. The DoLS Service is providing Rutland Council with monthly statistics of how many authorisations they have so that they can begin to scope their requirements as Responsible Body.
20. With regard to the requirements that the County Council will continue to be responsible for, the following work is being undertaken:
 - All DoLS assessments and authorisations are being completed within the DoLS Service wherever the setting is; this allows consideration of the number of individuals who will require assessment within new Legislation;
 - Scoping work will take place with Children and Family Services, including Looked After Children, Special Educational Needs and Children with Disabilities, to consider how many individuals who are approaching the age of Transition and whose care arrangements may require a DoLS assessment and authorisation;
 - Attendance at the LIN and East Midlands Forum for MCA and DoLS to maintain current knowledge of the changes.
21. The Director of Corporate Resources and the Director of Law and Governance have been consulted on the content of this report.

Equality and Human Rights Implications

22. An Equality and Human Rights Impact Assessment will be completed by the County Council in advance of the implementation phase of LPS.
23. The Equality Analysis completed by the Department of Health and Social Care in December 2018 indicated that LPS will be more streamlined and less intrusive than the existing system, and a more effective and proportionate way of ensuring Article 5 rights for all (protecting individuals' freedom from unreasonable detention, as opposed to protecting personal safety). It is expected that all people who lack capacity and need to be deprived of their liberty for their care or treatment will have the same access to the same protections, regardless of protected characteristic.
24. By putting the person at the heart of the system, and by extending access to the system, the LPS will advance equality of opportunity, especially for those with disabilities. The consultation process, involving families and carers, aims to improve the process for the person and can consider needs particular to protected characteristics.

25. Making the LPS process as straightforward as possible is an important factor in making sure everyone can access and use the system equally, regardless of age, disability or race.

Conclusions

26. The Committee is asked to note the content of this report and to receive a further report following receipt of the Code of Practice, which will also set out readiness for implementation of LPS for the County Council.
27. The DoLS Service is currently completing assessments and authorisations for all health and care settings.
28. The DoLS Service is monitoring referrals received in relation to their setting and commissioner so that the anticipated percentage that would transfer to another Responsible Body when the legislative changes can be determined.
29. The DoLS Service will continue to ensure that there are no assessments outstanding when LPS begins so that the transitions can be managed as seamlessly as possible.

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