



ADULTS AND COMMUNITIES OVERVIEW AND SCRUTINY COMMITTEE:
26 NOVEMBER 2013

REPORT OF THE DIRECTOR OF ADULTS AND COMMUNITIES

DEPRIVATION OF LIBERTY SAFEGUARDS ANNUAL REPORT

Purpose of Report

1. The purpose of this report is to inform members of the Adults and Communities Overview and Scrutiny Committee of the work undertaken by the Deprivation of Liberty Safeguards (DoLS) service on behalf of the three local authorities and the previous Primary Care Trust (now Clinical Commissioning Group [CCG]).

Policy Framework and Previous Decisions

2. Between 2009-13, the DoLS service was delivered via a Partnership Agreement under Section 75 of the National Health Service Act 2006 and Section 101 of the Local Government Act 1972 by the County Council on behalf of the local authorities and Primary Care Trusts across Leicester, Leicestershire and Rutland. This arrangement enabled the County Council to carry out delegated functions on behalf of the other parties. The Partnership Agreement was initially agreed by the Cabinet on 13 January 2009 for a two year period and then subsequently extended on an annual basis until March 2013, via supplemental agreements.
3. From 1 April 2013, the NHS responsibilities for DoLS transferred to the local authorities. The basis for this transfer was set out in the DoLS Funding Transfer fact sheet published by the Department of Health (DoH) on 24 September 2012. This meant that the local authorities became the supervisory bodies for people subject to a DoL in NHS settings. The advice of the DoH is that the local authorities have inherent jurisdiction arising from their guidance to assume responsibility for the delegated health functions, therefore the CCGs cannot be signatories.
4. A local memorandum of agreement exists between the CCGs and the Council to address issues relating to the handover of existing authorisations and the clinical responsibilities falling on the NHS arising from conditions attached to authorisations. The County Council will continue to host the service on behalf of the local authorities via a further supplemental agreement until March 2014.

Background

5. The DoLS are a later addition (2007) to the Mental Capacity Act (2005). They provide a legal framework for the deprivation of liberty of people who lack the

capacity to consent to arrangements made for their care or treatment, but who need to be deprived of liberty in their own best interests to protect them from harm. The safeguards apply to people over the age of 18, whose care/treatment is being delivered in a registered care home or hospital and that has not been authorised already under the Mental Health Act 1983.

6. DoLS came into force on the 1 April 2009. Care homes and hospitals (managing authorities) must seek authorisation from supervisory bodies in order to lawfully deprive a person of their liberty. Where a request for a standard authorisation for DoLS is made, the supervisory body is responsible for arranging a number of assessments to determine whether the authorisation is to be granted. Where any assessment is negative the authorisation cannot be granted. (Case studies are included as Appendix A.)
7. The purpose of the DoLS is to safeguard the rights of vulnerable adults living in care homes, or who are in hospital from arbitrary decisions being made to deprive them of their liberty and to provide a robust and transparent framework in which to challenge the authorisation of DoLS. In 2012-13, 63% of referrals to the DoLS service resulted in authorisation, which is slightly higher than the national average (55%). Where authorisations are not granted this is usually because this is deemed not to be in the person's best interests.
8. Approximately 60% of referrals are repeat (review) referrals for people who have previously been subject to one or more authorisation, and the DoLS team is responsible for following up previous authorisations where the managing authority has not requested a renewal. The DoLS service is aware that a number of reviews have relatively short periods of authorisation. The DoLS service needs to monitor its review process to ensure that the length of authorisation in relation to the risk and level of deprivation is appropriate.
9. The team also monitors information relating to which managing authorities request assessments and where appropriate information is relayed to safeguarding and compliance teams. A local network with representation from the local authorities and health bodies (which will continue to operate post April 2014) oversees performance information and quality standards, including the review of practice against an evolving case law landscape. The DoLS service is the subject of an annual report to the Safeguarding Adults Board. The Care Quality Commission (CQC) also monitors DoLS services in its role as regulator of hospitals and care homes. There have been no complaints received through the Council's Corporate Complaint process in relation to the DoLS service for 2012/13.
10. The current Partnership Agreement between the three local authorities cannot be extended beyond April 2014. On 7 August 2013, the Adults and Communities Departmental Management Team agreed, in principle, not to enter into a new agreement whereby the County Council continued to host the service on behalf of the local authorities, due to complexities arising from managing the service on behalf of three supervisory bodies and the need to identify efficiencies in the service, where possible. Therefore from April 2014, Leicester City Council will deliver their own DoLS service, and discussion is taking place with Rutland County

Council regarding the ongoing hosting of a service on their behalf via a commissioning agreement.

Resource Implications

11. Since they were first introduced there has been a year on year increase in the number of applications for DoLS. The general indicator, which continues to be validated by the DoH, is that higher referral figures are consistent with the spirit of the legislation. The referral rates for the County Council have increased from 2013 in 2009-10 to 488 in 2012-13. In line with previous years this continues to be the highest referral rate in the country, with the next highest being Buckinghamshire (365).
12. The total budget for the team is £547,150 with the County Council's share of this being £331,494. It is envisaged that the disaggregation of the current partnership arrangements will be broadly cost neutral for the authority. Given the ongoing increase in referrals a review of the service is taking place in advance of April 2014 in order to ensure that processes for managing the work are as robust and effective as possible. Changes to the structure of the team post April 2014 will be subject to consultation via a HR action plan.

Timetable for Decisions

13. None.

Background Papers

- Report to Cabinet: 13 January 2009 – Partnership Arrangements for Deprivation of Liberty Safeguards Assessments
[http://politics.leics.gov.uk/Published/C00000135/M00002116/AI00021418/\\$NDeprivationofLibertySafeguards.doc.pdf](http://politics.leics.gov.uk/Published/C00000135/M00002116/AI00021418/$NDeprivationofLibertySafeguards.doc.pdf)
- DOLS Funding Factsheet 2013/14 -
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216922/Deprivation-of-Liberty-Safeguards_Funding-Fact-Sheet-for-2013-14.pdf
- Mental Capacity Act 2005, DOLS Assessments (England): Annual Report 2012/13
<http://www.hscic.gov.uk/article/2021/Website-Search?productid=12141&q=title%3a%22Deprivation+of+Liberty+Safeguards%22&sort=Most+recent&size=10&page=1&area=both#top>
- Deprivation of Liberty Safeguards; putting them into practice
<http://www.scie.org.uk/publications/reports/report66.asp>

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List of Appendices

- Appendix A - Deprivation of Liberty Safeguards Case Studies

Relevant Impact Assessments

14. An Equality Impact Assessment was completed in 2009 and has been reviewed following the decision to restructure the service, and a revised action plan completed.