



Agenda Item: 8

REPORT OF THE SERVICE DIRECTOR FOR JOINT COMMISSIONING, QUALITY AND BUSINESS CHANGE

CHANGES IN RELATION TO LOCAL AUTHORITY RESPONSIBILITIES FOR DEPRIVATION OF LIBERTY SAFEGUARDS

Purpose of the Report

1. This report provides an update on current practice in relation to Deprivation of Liberty Safeguards, and an overview of the implications arising from national changes to Supervisory Body responsibilities from 1st April 2013 through the Health and Social Care Act¹.
2. The report seeks approval from members to:
 - establish an additional full-time Senior Practitioner post in the Safeguarding Adults Practice Team to meet the requirements of the changes in Supervisory Body responsibilities
 - assume responsibility for the Primary Care Trusts (PCTs') contribution towards administrative support posts for the Safeguarding Adults Practice team
 - ensure that funding is available for annual refresher training of Mental Health Assessors.

Information and Advice

Deprivation of Liberty Safeguards

3. The Mental Capacity Act (2005) (MCA)² came into force in October 2007. It provides a statutory framework to enable people to make decisions for themselves and, where they cannot, to enable others to make decisions on their behalf.
4. The Act was amended in 2009 and introduced the Deprivation of Liberty Safeguards (DOLS) to protect those people in hospitals and care homes who may not be able to make decisions for themselves about their care and treatment.

¹ Health & Social Care Act Schedule 5 Para.134 -136 <http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted>

² The Mental Capacity Act (2005) <http://www.legislation.gov.uk/ukpga/2005/9/contents>

5. Managers of care homes or hospitals must ask for permission from a supervisory body to provide care or treatment in a way that deprives the resident or patient of their liberty. The supervisory bodies (currently the Local Authorities and PCTs) must then arrange for an assessment.
6. Staff who undertake these assessments are called Best Interests Assessors and are specially trained and qualified in this work.
7. Local authorities are responsible for undertaking assessments in independent sector care homes and PCTs are responsible for assessments in hospitals. The legislation does not allow local authorities to complete the assessments within their own care homes because of potential conflicts of interest.

Current practice in Nottinghamshire

8. Within Nottinghamshire, there are currently three Supervisory Bodies: Nottinghamshire County Council, NHS Nottinghamshire County PCT and NHS Bassetlaw PCT. The Safeguarding Adults Practice Team co-ordinates all the DOLS referrals and acts as the administrative centre for processing these on behalf of each of the Supervisory Bodies.

Table 1: Referral rates for the three Supervisory Bodies

	Nottinghamshire County Council	NHS Nottinghamshire County PCT	NHS Bassetlaw PCT
2009/10	158	28	3
2010/11	192	45	5
2011/12	178	34	8

9. In addition to the above, there are a small number of referrals for assessments to be completed on behalf of other local authorities whose service users live within Nottinghamshire. These amounted to a total 20 assessments between 2009 and 2012.
10. NHS Nottinghamshire PCT and NHS Bassetlaw PCT make a combined contribution of £21,657 per annum. This covers the costs for business support staff in the Safeguarding Adults Practice Team to support the co-ordination of all the referrals for Best Interests Assessors to undertake assessments in hospital settings.
11. Currently, the Safeguarding Adults Practice Team hosts one Best Interest Assessor post. The post holder is employed by NHS Nottinghamshire County PCT.

Supervisory Body changes from 1st April 2013 and impact for the Local Authority

12. From 1st April 2013 the Supervisory Body responsibilities for Deprivation of Liberty Safeguards in hospitals will be transferred from PCTs to local authorities. As such, local authorities will be the only organisations assessing and authorising deprivations of liberty outside the Court of Protection.
13. From this time NHS Nottinghamshire County PCT will cease funding the Best Interests Assessor post within the Safeguarding Adults Team. The £21,657 per annum funding for administrative support will also cease.
14. At the same time as the reduction in staffing, the number of Deprivation of Liberty assessments will increase as the Council assumes responsibility for the assessments required in hospital settings.
15. Group Managers within the Adult Social Care, Health and Public Protection Department will be required to take on signatory responsibility for hospital assessments, amounting to just under one additional assessment per week, and given that the largest number of assessments relates to older people, this will impact mainly on Older Adults' Group Managers.
16. Additionally from 1st April 2013, the Council will have to assume responsibility for continuous professional development (CPD) training of the 15 Mental Health Assessors that are employed by Nottinghamshire Healthcare Trust.

Preparation for the changes

17. A programme of work is underway to enable implementation of the changes. These changes will be informed by the guidance document provided by SCIE and the Department of Health in November 2012³, "Managing the transfer of responsibilities under the Deprivation of Liberty Safeguards: a resource for local authorities and healthcare commissioners".
18. As indicated in section 7 above, the Council is not able to undertake the assessments within its own care homes. Previously these assessments were undertaken by the Health funded Best Interest Assessor within the Safeguarding Adults Practice Team. In anticipation of the changes, the Council is currently in the processes of agreeing reciprocal arrangements with Nottingham City Council for completion of these assessments with as from 1st April 2013.
19. In order to undertake the additional DOLS, it is proposed that a permanent full time equivalent Senior Practitioner is established to be based within the Safeguarding Adults Practice Team commencing in April 2013.

Financial Implications

20. The PCTs' contribution of £21,657 p.a. (towards administrative support costs) will cease at the end of March 2013. NHS Nottinghamshire PCT will also cease funding the Best interest Assessor post at the end of March 2013.

³ "Managing the transfer of responsibilities under the Deprivation of Liberty Safeguards: a resource for local authorities and healthcare commissioners" <http://www.scie.org.uk/publications/reports/report62.asp>

21. The Department of Health will provide additional funding to local authorities for this transfer of responsibilities. In 2013/14, additional national funding to the value of £4.55m will be available from the Department of Health to local authorities to help them to undertake the Supervisory Body function in hospital settings in 2013/14.
22. This funding will be included in the Learning Disabilities and Health Reform Grant. The grant allocation for Nottinghamshire for 2013/14 is £65,759, which is in addition to the usual local authority funding for the Mental Capacity Act role and the supervisory body role in relation to care homes, both of which will continue.
23. It is anticipated that the total funding of £65,759 will be recurrent. However, the grant will no longer be ring-fenced. The Council will be required to demonstrate that it has a robust system for the Deprivation of Liberty Safeguards which is legally compliant.

Reason/s for recommendations

24. Establishment of an additional Senior Practitioner (Best Interest Assessor) post and the retention of the business support post will enable the Council to continue to provide a comprehensive and effective service which takes in to account its additional mandatory responsibilities.
25. The Council will seek to progress the option of transferring of the current post holder from NHS Nottinghamshire County PCT to the employment of the County Council to ensure continuity of service. The Safeguarding Adults Practice Team will continue to benefit from the current post-holder's expertise in undertaking DOLS assessments in hospital and their role in providing training to staff within the department.
26. It is a legal requirement for Mental Health Assessors to undertake annual refresher training and provision of this will be the local authority's responsibility from April 2013.

Statutory and Policy Implications

27. This report has been compiled after consideration of implications in respect of finance, equal opportunities, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Implications for Service Users

28. Nottinghamshire already has in place joint arrangements for the receipt and management of DOLS referrals which means that in practice there should not be any impact of the changes to service users.

Human Rights Implications

29. Continued best practice in assessment of mental capacity and deprivation of liberty safeguards contributes towards the protection of the European Convention on Human Rights for the citizens of Nottinghamshire.

Human Resources Implications

30. A permanent full-time equivalent Senior Practitioner post will need to be established, commencing from 1st April 2013.
31. The business support staff post will be continued.

RECOMMENDATION/S

It is recommended that:

- 1) 1 fte (37 hours) Senior Practitioner post, Pay Band C, scp 39-44 (£41,434-£47,106 per annum) be established within the Safeguarding Adults Practice team, with an authorised car user allowance at a cost of £1,350 p.a. with effect from 1st April 2013
- 2) Funding of £19,768 to be allocated from the Learning Disabilities and Health Reform Grant for the continuation of current business support arrangements.
- 3) Funding of £2,000 to be allocated from the Learning Disabilities and Health Reform Grant for the annual legal training of Mental Health Assessors.
- 4) The shortfall in the Learning Disabilities and Health Reform Grant compared to existing provision from the PCT's be met from within existing service budget.

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Constitutional Comments (LMc 24/12/2013)

32. The Adult Social Care and Health Committee has delegated authority within the Constitution to approve the recommendations in the report.

Financial Comments (CLK 25/01/2013)

33. The financial are contained in the body of the report.

Background Papers

None.

Electoral Division(s) and Member(s) Affected

All.

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