

12th September 2016**Agenda Item: 10**

REPORT OF THE SERVICE DIRECTOR, MID NOTTINGHAMSHIRE

DEPRIVATION OF LIBERTY SAFEGUARDS

Purpose of the Report

1. To provide Members, as requested, with a quarterly progress report on implementation of the Corporate Deprivation of Liberty Safeguards (DoLS) Strategy.
2. To approve the establishment of 4 FTE temporary Community Care Officer (Grade 5) posts for 12 months.

Information and Advice

3. Some information relating to this report is not for publication by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972, this covers information relating to the financial or business affairs of any particular person (including the Council). Having regard to all the circumstances, on balance, the public interest in disclosing the information does not outweigh the reason for exemption because of the risk to the Council's commercial position disclosure is likely to pose. The exempt information is set out in the **Exempt Appendix**.
4. The Deprivation of Liberty Safeguards (DoLS) were originally introduced to provide a legal framework for the deprivation of liberty for people who lack mental capacity to make decisions about their care arrangements themselves. They apply to people who are in hospital or residential/nursing care and who are subject to restrictions and restraints in their lives, for example, not being free to leave or requiring continual supervision. The Local Authority is required to arrange an assessment of their circumstances to determine whether the care provided is in their best interests to protect them from harm, whether it is proportionate and to determine if there is a less restrictive alternative.
5. The DoLS process requires assessments to be undertaken by a member of staff who has successfully completed competency based training in DoLS work in order to become a 'Best Interests Assessor' (BIA), and a doctor. The Local Authority has a statutory duty to make sure the DoLS process is followed and that these assessments are undertaken within the legal timescales. Once a DoL is authorised there is a requirement to review it, annually at minimum.
6. Alternative arrangements are currently in place for people who live in the community, which require a social worker to make an application to the Court of Protection to authorise the deprivation of liberty and the care arrangements.

7. On the 19 March 2014, the Supreme Court published its judgment in the case of P v Cheshire West and Chester Council and P and Q v Surrey County Council, which further defined the meaning of Deprivation of Liberty. The effect of this is that a much greater number of people in residential care homes, nursing homes and hospitals now come under the DoLS than previously and by law they must be assessed under the DoLS procedure.
8. In 2013/14, the Council received only 300 DoLS referrals. Following the Cheshire West judgement, in 2014/15 the total number of DoLS referrals received increased to 1,748. Since then, the predicted significant upward trend in DoLS referrals in Nottinghamshire over the previous 18 months have proved to be accurate in line with the Council's higher predictions. The number of DoLS referrals received in 2015/16 was 2,800, against a predicted 3,000. It has previously been projected that the number could rise up to 5,000 a year before it reaches a plateau, with the estimated cost of managing this level of activity being £5.2M.
9. A number of reports have been presented to Adult Social Care and Health (ASCH) Committee regarding DoLS since the publication of the Supreme Court judgement.
 - Reports in December 2014 and June 2015 highlighted the impact of this judgement including a predicted rise in demand for assessments locally and nationally. It set out the proposed Corporate Strategy and plan to address this rise in demand and included the business case for additional resources needed to meet these pressures.
 - A progress report was presented to ASCH Committee on 11th January 2016 which provided an update on the implementation of agreed resources, the first phase of process reviews and prevention work.
 - The most recent progress report was presented to ASCH Committee on 18th April 2016. This provided a further update, initial feedback on the Peer Review and requested approval to permanently establish 25 FTE posts and extend 3 FTE temporary posts for 12 months.

Demand for Assessments

10. Assessment data indicates that the number of referrals received each week continues to be on an upward trend over the longer term. As at the end of Quarter 1 2016/17, the service received an average of 56 referrals per week. The number of referrals the service receives each week fluctuates considerably. Since March 2014, the lowest number of referrals received has been 18 and the highest has been 106. The pace in the rise in demand will be monitored regularly and projections revised as necessary. The ability to complete more assessments will mean that a greater number of renewal assessments will be required. Furthermore, more assessments completed within care homes will likely prompt more referrals from care homes regarding other residents who require DoLS.
11. The service has made progress in reducing the number of people waiting to be assessed. The waiting list (as of 24/07/16) is down 12% on when it was at its highest level in mid-February 2016. The average number of assessments completed each week has increased from 34 in 2015/16 to an average of 66 assessments currently. In addition, the service has now completed assessments on 68% of all referrals received since the

landmark Cheshire West judgement in March 2014. This is a significant improvement from when the total reached 50% in January 2016 and is double the amount of assessments that were completed in the previous year. The impact of this, however, is offset by more referrals being made.

Recruitment

12. From the additional £2 million resources agreed as part of the budget setting process for 2016/17, all management and business support posts are now filled.
13. Best Interests Assessors (BIAs) continue to be in high demand and short supply locally, regionally and nationally. 8.3 full time equivalent permanent BIA posts in the central team are filled out of a total establishment of 29. A recruitment drive is underway offering non BIA staff the opportunity to join the central DoLS team and be fast track trained as BIAs 'on the job'. There has been good interest shown in this and whilst the recruitment is completed, agency BIAs are completing assessments. A rolling advert remains on the Nottinghamshire County Council website.

Agency Staff

14. The DoLS service continues to work with the Council's staffing agency, Reed. In addition to any suitably qualified full time staff that are available to work substantively within the team, Reed identify an average of two new agency BIAs per week who can complete assessments on a part-time basis. The Council is currently allocating assessments to 31 agency BIAs who are able to offer ad hoc hours and be paid on a per assessment basis. The current average number of assessments completed in this way by Reed BIAs is 23 per week, an increase on the average of 21 agency assessments completed per week reported to Committee in April 2016.

BIA Training

15. A further five social workers successfully completed their BIA training in May 2016. The service remains on track to train a minimum of 15 candidates per annum, staggering training across two different courses throughout the year.
16. Work is ongoing with the operational teams to enable the release of newly trained BIA staff to work in the central DoLS service. Colleagues within the central and district teams have developed ideas for more flexible working options for locality staff, such as working for fixed periods or part-time in the central team whilst retaining their substantive posts. This is linked into career progression policy. In order to support the districts to do this, until all 29 permanent BIA posts in the central team are recruited to, the district posts will be backfilled by unqualified staff funded from the DoLS budget.

Peer Review

17. The outcome of the Council's recent Peer Review, led by the Director of People and Deputy Chief Executive of Rutland County Council was reported to Committee on 16th May 2016. The key line of enquiry with regards to the DoLS service was:

'In June 2015, the Council developed a corporate strategy and project plan to address the increasing demand for DoLS assessments. Do we have the strategy, approach and capacity in place to do this efficiently and effectively, and to ensure that arrangements are in line with meeting legal requirements?'

18. The Peer Review identified that overall Nottinghamshire's approach was the right one, that it has a strong ethical basis, is at the forefront of Councils in its use of data analysis and is well regarded for its involvement in and contribution to both regional and national fora. Key recommendations made were to develop a communications strategy and review how cases are risk assessed and prioritised, in order to use the additional resources to best focus on people who will benefit most, as well as best manage risks to the Council. Work is underway on both these areas.

Risk assessment and prioritisation of work

19. The Corporate DoLS Strategy is now being refreshed to include implementation of the recent Association of Directors of Social Services (ADASS) advice note on additional interim emergency measures and safeguards. ADASS continues to advise local authorities (LAs) that they have a duty to meet their statutory responsibilities and develop plans to resource this as quickly as possible. Whilst advising LAs to continue to make every effort to meet these requirements as soon as practically possible, the shortage of financial resources and of suitably qualified BIAs means that in the interim ADASS has provided advice on how to best prioritise in the current circumstances based on principles of meeting legal requirements as far as possible, protecting those facing the greatest risk and proportionality.
20. The advice focuses on renewals for people settled in long term accommodation and those people who are a low priority on the waiting list and who otherwise may never be assessed. It incorporates a risk based approach to utilising methods such as increased use of desk top assessment, phone contacts and non-qualified staff supporting the gathering of information to progress the assessment to a point where the BIA can make a decision. Discretion will always rest with the BIA to revert to a fuller assessment that includes a visit if required.
21. By way of example, if someone is in a long term, stable placement in a care home, where their circumstances are unlikely to have changed, a desktop renewal assessment could take place. Non-social work qualified staff will undertake the preparatory work to gather information for the assessment and to support the BIA to identify how the assessment could best be undertaken. It will consider whether the person can communicate in a face-to-face interaction as part of the assessment. If the BIA has enough information to be confident that no further insight would be gained from meeting the person face-to-face, they can use the information they have gathered as well as speaking to family, care home managers and key workers over the telephone to undertake a desktop assessment. In Nottinghamshire, early estimates suggest a significant number of renewals which will be required in Nottinghamshire over the next 12 months could be completed as a desktop assessment.
22. The ADASS advice note recommends a similar approach to complete low priority cases from the waiting list. In these circumstances, cases which may be suitable for a desktop assessment could include: people in hospices/hospitals at the end of life; high

dependency, advanced dementia or similar in a nursing placement; settled placements, where the person has a severe learning disability or dementia / no communication, and as such that a face to face interview is unlikely to add any additional detail to that which can be obtained from others. In some of these scenarios, undertaking multiple detailed assessments can become distressing for both individuals and their families and a more proportionate approach would be welcomed. ADASS intend to develop a matrix to help identify cases which may fit this criteria.

23. An initial meeting has taken place between senior managers to discuss how this could be implemented. The proposals have also been shared and discussed with BIAs. It is important to note that the BIA retains full control of the process, prioritisation, risk assessment and the decision. If during the course of the assessments the situation for the person changes, the BIA is under no obligation to rely solely on a desktop assessment for a first time assessment, or a renewal if they believe the person being assessed is at risk.

Regional collaboration

24. Nottinghamshire continues to play a leading role in the East Midlands regional work on DoLS. The Regional Forum and lead Assistant Directors have been assessing areas of potential benefit from collaboration. In addition to continued shared learning, a collaborative approach to training more BIAs and Mental Health Assessors is being progressed. There is no appetite to combine services at a sub/regional level as this would not reduce the number of assessments, nor provide additional capacity to complete them. Also, each authority is required to authorise its own assessments and uses different client record systems to do this, which would be extremely difficult to link.

Further ongoing work

25. In addition to effectively managing the capacity of the DoLS service, the Strategic Development Manager will refresh and implement the Council's corporate strategy for DoLS. This will include the following:
 - DoLS preventative work will continue to identify opportunities to educate managing authorities in order to avoid inappropriate referrals (currently approx. 8% of total referrals).
 - Working with Mental Health Assessors (MHAs) to improve the quality and efficiency of assessments. This includes working towards enabling MHAs in some circumstances to carry out Mental Capacity assessments, as well as diagnosis. This will free up the Council's BIA capacity.
 - Implementation of a phase 2 Lean Plus review to continue to streamline all DoLS processes is progressing to ensure duplication is minimised and that a 'digital first' approach is adopted wherever possible.
 - Increasing the pool of managers who are required to authorise the recommendation made by the BIA as to whether the person should or should not be deprived of their liberty.

- The Self Service Portal which allows wider partners to submit DoLS forms electronically through the Council's website is now live. Colleagues are currently evaluating the success of the initial launch which will increase awareness and use of the portal.
- Monitoring updates from the Law Commission regarding any proposed changes to legislation for DoLS.

Establishment of additional temporary DoLS posts

26. In order to gather the necessary information to do more desktop assessments, the central team needs to utilise non BIA staff to complete these and free up BIA time for tasks where their expertise is mandatory. In order to trial this, approval is sought to fund 4 FTE temporary Community Care Officer (Grade 5) posts to be based in the central team for 12 months.

Other Options Considered

27. Various staffing complements have been considered to make best use of available advice to increase capacity to undertake more assessments and renewals. The selected approach represents best use of resources to achieve maximum outputs and is a good fit with the existing structure of the service. Officers will continue to make local, regional and national links to identify future cost effective options.

Reason/s for Recommendation/s

28. Demand for assessments and renewals will continue to increase. As a result, the Council needs to balance best practice with pragmatic, proportionate decision making and risk management. The recommendations made within this report represent the best way to achieve this balance in light of the continuing challenges that the DoLS service in Nottinghamshire faces.

Statutory and Policy Implications

29. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Financial Implications

30. The cost of establishing 4 FTE temporary Community Care Officer (Grade 5) posts for 12 months is set out in the table below. This calculation assumes that all 4 FTE posts will be recruited to and will be in post by November 2016.

Temporary Staffing Resource	2016/17 cost	2017/2018 cost
4 FTE Community Care Officer (Grade 5)	£53,659	£75,121
Total	£128,780 ¹	

31. These costs can be met by current underspend from the budget for agency staff during 2016/17 and from reserves during 2017/18.
32. The Council's modelling shows that the number of referrals for DoLS is projected to rise as high as 5,000 a year before it plateaus. This increase is partly due to the fact that each DoL that is authorised requires a new assessment within a maximum period of a year; so as more assessments are completed, more are generated. In order to meet this projected ongoing demand from 2017/2018 onwards, a further increase in resources will be required with a total yearly recurrent cost of the DoLS service of £5.05m.
33. On 25th February 2016, Full Council approved the budget which included an additional recurrent £2M to partially meet the pressures on the DoLS service. This brings the total DoLS budget from 2016/2017 to £2.865M. This is sufficient to employ 29 FTE BIAs as well as the appropriate associated levels of management, administrative, mental health assessment and advocacy resources. A further one-off of £1M is held in reserves to reduce the waiting list. The remaining funding was held at risk. This report sets out the good progress made to date with implementing the agreed additional resources and the impact that this has had on improving the amount of assessments completed. The evidence is that despite the increase in resources, the full implementation of the interim ADASS guidance and the use of temporary reserves, a further review of resources will be required to ensure the Council has sufficient capacity to meet the incoming demand for DoLSs assessments within the required timescales.

Human Resources Implications

34. The temporary CCO posts will be recruited to on fixed term contracts. The recognised trade unions have been consulted and are in agreement with the recommendation.

RECOMMENDATIONS

That the Committee:

- 1) notes the progress with actions being taken to implement the Corporate Deprivation of Liberty Safeguards Strategy.
- 2) approves the establishment of the following temporary posts to the DoLS service for a period of 12 months.

¹ Salary calculated at top of Band 5 (SCP 29). Calculation includes salary, NI contributions, Superannuation (+20%) and Vacancy Level Turnover (-12%). Also includes cost estimate for mileage allowance and technology requirements (£11,200 for 4 FTE posts for 12 months). These posts will attract authorised car user status. These costs have been factored into costs detailed in the report

- 4 FTE Community Care Officers (Grade 5)

Sue Batty
Service Director, Mid Nottinghamshire

For any enquiries about this report please contact:

Daniel Prisk
 Strategic Development Manager (DoLS)
 T: 01159774896
 E: daniel.prisk@nottscc.gov.uk

Constitutional Comments (LM 09/08/16)

35. The recommendations in the report fall within the Terms of Reference of the Adult Social Care and Health Committee

Financial Comments (KAS 05/08/16)

36. The financial implications are contained within paragraphs 30 to 33 of the report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Deprivation of Liberty Safeguards – report to Adult Social Care & Health Committee on 1 December 2014

Deprivation of Liberty Safeguards – report to Adult Social Care & Health Committee on 1 June 2015

Adult Social Care and Health – Overview of Current Developments - report to Adult Social Care & Health Committee on 11th January 2016

Deprivation of Liberty Safeguards – report to Adult Social Care & Health Committee on 18 April 2016

Outcome of Sector Led Improvement Peer Review – report to Adult Social Care & Health Committee 16 May 2016

Electoral Division(s) and Member(s) Affected

All.

ASCH418

