

1 December 2014**Agenda Item: 4**

REPORT OF SERVICE DIRECTOR MID AND NORTH NOTTINGHAMSHIRE DEPRIVATION OF LIBERTY SAFEGUARDS

PURPOSE OF THE REPORT

1. This report provides a progress update to Members on implementing the recommendations agreed by Committee on 12 May 2014, to manage the increased numbers of Deprivation of Liberty Safeguard (DoLS) Assessment requests. It also requests approval to extend the posts in the current central DoLS team to March 2016 in order to meet the ongoing pressures.

INFORMATION AND ADVICE

Background

2. The Deprivation of Liberty Safeguards (DoLS) were originally introduced to provide a legal framework for deprivation of liberty and to ensure that there were no breaches in the European convention on Human Rights. They provide legal protection for vulnerable people who are not able to make decisions about their care arrangements and who are subject to restrictions and restraints in their lives. The safeguards ensure that an assessment of their circumstances is carried out 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.
3. 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 change in test is that a much greater number of people in residential care homes, nursing homes and hospitals now come under the Deprivation of Liberty Safeguards (DoLS) than previously and by law they must now be assessed under the DoLS procedure.
4. The DoLS process requires assessments to be undertaken by staff who have successfully completed competency based training in DoLS work; 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. In July 2014 a Lean+ review was undertaken in order to streamline the process where possible. This work now needs to be reviewed in light of new shorter national forms which are due to be launched in November. Benchmarking against other local authority approaches to undertaking assessments is also being undertaken.

The work is, however, by its nature a resource intensive process where up to six different assessments may be required on each case and the BIA would typically need to visit the person, liaise with the persons family members and involved professionals, consult with the care provider and consult notes, support plans, etc. It is recognised nationally that each assessment can take between 15-20 hours.

5. The Supreme Court has also clarified that Deprivation of Liberty can occur in domestic settings if the State (e.g. the Local Authority or NHS) is responsible for the arrangements. This means that a person could be deprived of their liberty in their own home, or in supported living (increasingly referred to as a 'community DoL'). These Deprivations of Liberty do not come under the DoL Safeguards, but do have to be assessed with the same rigour, have to be authorised by the Court of Protection and have therefore further increased workloads.
6. At this point, a small number of cases have been referred to the Court of Protection. Each case will require an application fee to the Court and an additional cost of authorisation which together amount to £1,000.00 per individual. A scoping exercise has revealed that this is a large piece of work to identify those affected that needs further dedicated oversight.
7. The report to committee on 12 May 2014 analysed the implications of this ruling and made recommendations around how to meet the increased demands. There was a request for a permanent budget pressure allocation of £2m to meet the recurrent cost of implementation from 2015/16. With this budget, Committee approved the establishment of a temporary central BIA service for a period of twelve months to co-ordinate activity, undertake assessments and provide advice to managing authorities and the County Council.

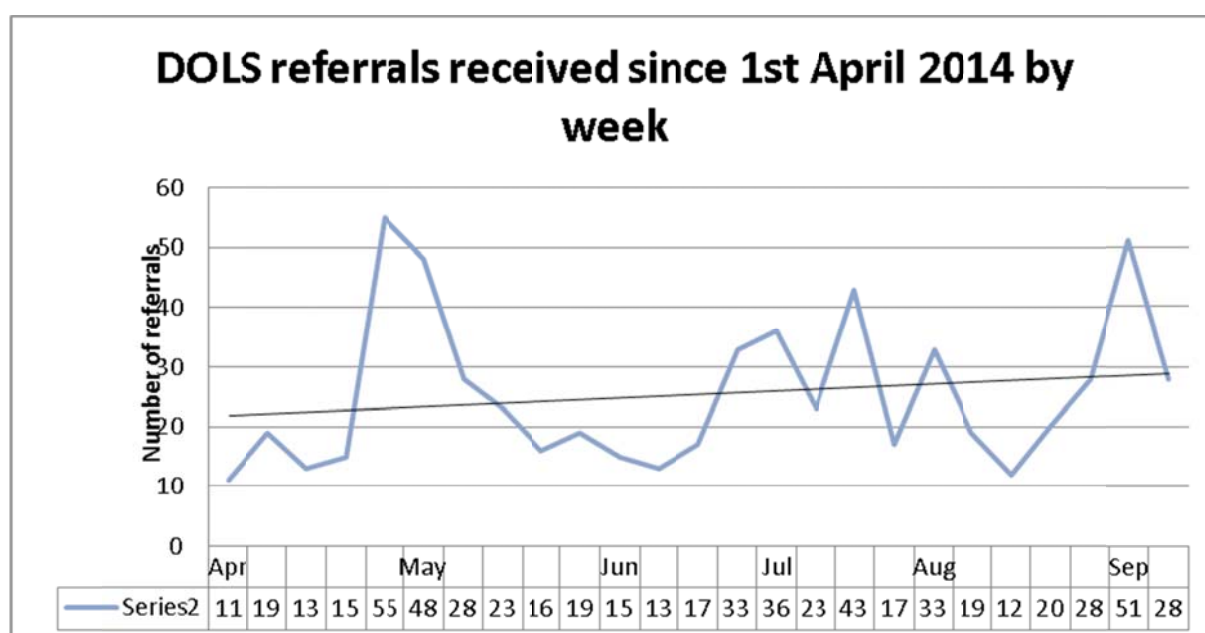
Progress up-date

Posts agreed	Recruitment up-date
1 FTE Group Manager/Principal Social Worker	Appointed as of 22/09/14.
1 FTE Team Manager	Retained in post.
12.5 FTE BIA's	6 in post with 1 more to start in November
5 FTE Business Support staff	2 retained in post, plus 3 temporary contracts

8. All of the above posts have been appointed to, except for 5.5 FTE BIAs. This has been achieved through permanent staff with the relevant experience being seconded into the temporary arrangements and backfilling their posts on a temporary basis. In order to also maintain sufficient qualified staff in the District teams it is now necessary to wait until the next tranche of BIA training is completed in April 2015, before moving any further staff into these posts.
9. External recruitment and use of agency staff has been explored as means of increasing capacity. However, due to the high national demand for BIAs, current council approved agencies have no ongoing availability of agency BIA's at this time. Only occasional individual assessments can be purchased when their availability allows.

10. The current central Nottinghamshire DoLS team is based at Lawn View House. All referrals come in to this central point. The referrals are then prioritised from one to three, the highest priority given to those in hospital based settings. They are further prioritised on the basis of the extent of the restraint and restrictions evident in the referral. Due to the number of referrals and the waiting list, the current method of prioritising is under constant review.
11. Work is allocated across the central DoLS team and to District based BIA's from adult district teams on the weekly rota. The aim is for two to three assessments a week to be completed by each BIA in the central team. The three Advanced Social Work Practitioners in the central team are also responsible for operating a duty system that prioritises and allocates work, and provides expert oversight for BIA's and importantly care homes and hospital staff who may contact the team for advice and guidance. They undertake fewer assessments due to this and the time that they also need to spend shadowing and supervising trainee and less experienced BIA's.

Deprivation of Liberty Returns (DoLS)



12. The Department monitors numbers of weekly referrals, assessments completed and those waiting. The above graph shows the weekly referrals received by the DoLS team since the 1 April 2014. The volume of work varies, but overall shows a steady upward trend as a result of the March 2014 ruling.
13. Summary of the data since April 2014 shows that-
 - 820 referrals have been received
 - 233 assessments have been completed
 - 108 deprivations have been authorised

- 143 referrals have been started but subsequently ceased e.g. due to the team identifying responsibility rests with another LA.

As of 27 October 2014, there are 420 referrals waiting to be assessed of which 370 exceed statutory timescales.

14. The local authority has a statutory duty to make sure that the DoLS process is followed and that these assessments are undertaken within the legal timescales. It is important to note that the Department of Health is aware and understands that most local authorities at this time are unable to meet their timescales for assessments due to the sudden and unexpected level of increase in referrals and the lead in time it takes to train sufficient staff.
15. There is also, however, a Department of Health expectation that local authorities have robust plans in place to address this within a reasonable timeframe. Nottinghamshire County Council can evidence this through the approval of additional capacity, the creation of a central team and increased BIA training. This is in line with what other local authorities are doing. Work is also underway to fully scope increased demand for assessment of community deprivations of liberty. To do this is not in itself straightforward and cannot be done as a desk top exercise as each case requires initial review to determine whether the individual might be subject to a deprivation of liberty, looking into the capacity, intensity, degree and level of restrictions. A scoping tool has been developed to assist with identifying people subject to DoL and prioritising cases for the courts.

Benchmarking

16. From contact with the East Midlands DoLS forum, it is possible to benchmark the current waiting list with comparator authorities in the East Midlands. County authorities are reporting waiting lists of between 66 to 600. Derbyshire and Lincolnshire are quoting similar numbers awaiting assessment as Nottinghamshire. Again as with Nottinghamshire, all the contacted authorities have developed central teams to cope with demands and are using independent BIAs at times.

STATUTORY AND POLICY IMPLICATIONS

17. 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 only), the public sector equality duty, safeguarding of children and vulnerable adults, 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.
18. By not meeting timescales and maintaining a waiting list, those referred may be unlawfully deprived of their liberty. This has risks for the Department in terms of legal challenge which the plans outlined in the report aim to address.
19. The Law Commission is leading a DoLS review. They have indicated, however, that draft legislation will not be available until the summer of 2017.

FINANCIAL IMPLICATIONS

20. In 2013/14 £1m was set aside in a reserve to cover the cost of implementation in 2014/15. The forecast cost of the limited team since June 2014 is £500k in the current financial year. This leaves approximately £500k available towards the cost of employing the team in 2015/16.
21. The full year effect of employing the full team is approximately £1m. On top of this are the Mental Health Assessors costs estimated to be £390k, and training and legal costs, which are difficult to quantify.
22. The total cost to the authority to implement the Supreme Court Judgment was estimated at £2m. Unfortunately the £2m was not put into the MTFS as a financial pressure; therefore the remaining £500k would only cover the cost of the full team till around June 2015. If the remaining £1.5m was met from Contingency funding, there would be sufficient funding available to approve extending the posts in the current central DoLS team to March 2016 in order to meet the ongoing pressures from DoL that will endure at least until new legislation. The funding will also cover the costs of increased BIA training provision over that period.

HUMAN RESOURCES IMPLICATIONS

23. There are organisational redesign implications around the staff in the central team being seconded and on fixed term contracts. This leads to further temporary positions in other operational teams by way of backfilling posts.
24. Prior to the Supreme Court ruling, approximately six places per year were filled on the BIA course. This will now be increased to approx 20 for 2014-15. This has implications for the central teams in terms of supporting and accrediting new BIA's. The majority of candidates will be social workers from operational teams who will support the district rota once approved. The process takes five months to complete so the first nine will not be able to practice as a BIA's until April 2015. Releasing staff from operational teams for training may affect the ability of these teams to meet required performance measures.

HUMAN RIGHTS IMPLICATIONS

25. Deprivation of liberty legislation arises from the "Bournewood" case which was heard by the European Court of Human Rights. The case decided that where a person is deprived of their liberty without any legal authority then it is a breach of Article 5 of the European Convention of Human Rights: "No one should be deprived on their liberty unless it is prescribed by law". Therefore, when a person needs to be deprived of their liberty there must be safeguards in place in order to ensure the department uphold their human rights.

PUBLIC SECTOR EQUALITY DUTY IMPLICATIONS

26. The majority of those referred for assessment and those subject to DoLS are older people with dementia and younger adults with learning disabilities. The safeguards ensure that those who need to be deprived of their liberty are appropriately assessed and have a right of appeal. With the current waiting list, the above group are the most affected group.

27. There are concerns that by prioritising hospital referrals, those in care homes are the least protected.

SAFEGUARDING OF CHILDREN AND VULNERABLE ADULTS IMPLICATIONS

28. Where individuals are unlawfully deprived of their liberty, this is considered to be a Safeguarding Adults issue. The value of the new safeguards would be compromised if the process for DoLS assessment became largely an administrative and bureaucratic process. Practitioners also, however, need to ensure that people who lack capacity in regard to decision making about accommodation issues receive a timely service. A balanced approach will therefore be taken on an individual basis, based on risk. A balanced approach is also being taken to ensuring sufficient experienced practitioners remain in the District teams to undertake safeguarding adults work.

IMPLICATIONS FOR SERVICE USERS

29. See twenty three to twenty four above.

WAYS OF WORKING IMPLICATIONS

30. The central DoLS team are included in the plan for the roll out of tablet devices next year to social work staff. This will mean workers will have direct access to systems via a tablet, which will reduce the time taken to complete the administration associated with the process.

RECOMMENDATION/S

1) It is recommended that Committee:

- i. note the progress made with implementing the recommendations agreed by Committee on 12th May 2014, to manage the increased numbers of Deprivation of Liberty Safeguard (DoLS) Assessment requests
- ii. approve extending the posts in the current central DoLS team to March 2016 in order to meet the ongoing pressures as detailed below:
 - 1 FTE Group Manager/ Principal Social Worker (to be evaluated) the posts will be allocated authorised car user status
 - 1 FTE Team Manager – Band D the posts will be allocated authorised car user status
 - 12.5 FTE BIA Assessors (Band B or Band C) the posts will be allocated authorised car user status
 - 5 FTE Business Support Officer - Grade 3

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Constitutional Comments (SLB 24/11/14)

28. Adult Social Care and Health Committee is the appropriate body to consider the content of this report. Proposals to change staffing structures must include HR advice and the recognised trade unions must be consulted on all proposed changes to staffing structures; any views given should be fully considered prior to a decision being made.

Financial Comments (KAS 24/11/14)

29. The financial implications are contained within paragraphs 20 to 22 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.

- ASCH218 – Committee report 12 May 2014.

Electoral Division(s) and Member(s) Affected

- All.

ASCH265