

**1<sup>st</sup> June 2015****Agenda Item: 6****REPORT OF THE CORPORATE DIRECTOR, ADULT SOCIAL CARE,  
HEALTH AND PUBLIC PROTECTION****DEPRIVATION OF LIBERTY SAFEGUARDS****Purpose of the Report**

1. To update the Committee on the progress with actions being taken to respond to the increasing number of referrals for Best Interest Assessments (BIAs) under Deprivation of Liberty Safeguards (DoLS).
2. To set out proposals to enable the Council to meet its statutory duties in relation DoLS on a longer term basis.

**Information and Advice****The National Context**

3. On 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 Deprivation of Liberty Safeguards (DoLS) than previously and by law they must be assessed under the DoLS procedure.
4. A national review of the legislation is being undertaken by the Law Commission with a timeline of a draft bill being completed in April 2017. It is hoped that this will also address the need for a simpler process for a community DoL (where a person who is deprived of their liberty is not living in a care home or hospital). These do not currently come within the current DoL safeguards and require a different process. Cases have to be progressed to the Court of Protection (CoP) and this work is undertaken by the District Teams with approximately 11 current Nottinghamshire cases. Legal Services have to check and progress the cases. It is estimated that the total potential community DoL population in Nottinghamshire is between 350-450 people, the majority of whom are in supported living. The figures referred to in the rest of the report do not include community DoL work as the work is not currently within this team's remit. The potential work arising from community DoLS requires ongoing monitoring and analysis as there is the potential for these referrals to increase in the future, especially following the proposed national consultation and revised legislation.

5. There has been a clear and significant upward trend in DoLS referrals over the previous financial year. Between April 2014 and April 2015, average weekly referrals increased 125% from an average of 20 referrals to 45 referrals per week. This includes re-authorisations required within the year. 50% of assessments completed result in between 1-3 re-authorisations within a year, which implies an exponential growth to the number of assessments required.
6. Increasing awareness of DoLS by referring agencies results in 'spikes' of referrals e.g. following media coverage, training or CQC Inspection in Care Homes or hospitals. Based on previous years' rates and including re-assessments it is estimated that in 2015/16 the Council will need to undertake 3,200 (re)assessments.
7. Priority is given to assessing people referred by Hospital Trusts, Part 8 Reviews (a challenge to any of the 6 DoLS qualifying criteria) and re-authorisations. This is in line with Association of Directors of Adult Social Services (ADASS) guidelines. At this time, the central DoLS team is keeping pace with hospitals referrals and re-authorisations in the main.
8. Looking at activity levels in other local authorities as well as analysis of patient populations in hospital trusts and residents in care homes, it is anticipated that as a worst case scenario, referrals could potentially rise to approximately 5,000 a year, (including assessments for reauthorisation). At this time, referrals are not increasing at such a significant rate and may not ever reach this level, however, it is believed that incremental increases in referral rates are likely to continue in 2015/16 as awareness amongst care providers increases, with no sign of these reaching a plateau yet.

### **Establishment of Nottinghamshire's central DoLS team**

9. Committee approved the establishment of a central team (Nottinghamshire DoLS Team) consisting of 12.5 temporary social workers, a team manager and 5 fte business support staff up to March 2016. A temporary Principal Social Worker (PSW) post was also established and recruited to. The post holder, in addition to the PSW duties, also manages this central DoLS team and the Central Adult Mental Health Practitioner Team (CAMHP).
10. Currently 6.8 of the 12.5 social worker posts are filled. The remaining 5.7 posts are vacant despite attempts to recruit to these on a temporary basis. With the exception of one, all are filled on a temporary secondment basis. All staff recently stated that if the posts were permanent that they would choose to remain in the central DoLS team rather than return to their substantive posts. The uncertainty as to the future of these posts makes it difficult to recruit and retain sufficient staff with the required Best Interest Assessors (BIA) qualification. The District Teams are also finding it increasingly difficult to recruit and retain staff in the backfill arrangements for the central DoLS posts, with constant change destabilising their expertise and skill mix. It is therefore proposed to offer the current employees in the team permanent appointments following agreement of permanent funding.
11. A further 8 BIAs have, in April 2015, successfully completed their training. The central DoLS team has to mentor newly qualified BIAs, ensuring adequate supervision and support is available until they become more experienced. There are also 15 BIAs

currently practicing and located in the district teams. These staff are required to remain in the locality teams due to the volume of assessments and also to complete other complex activities such as safeguarding interventions.

12. Enquiries have shown that, due to being in high demand, independent and agency BIAs are not available on a full-time basis. Negotiations are therefore underway with Reed agency to agree a specification to deliver additional assessment capacity. The agency would utilise a number of part-time BIAs and the central team duty workers would manage the allocation of work across these, with the Team Manager providing quality checks. The plan is to start the work with Reed in June 2015. The contractual arrangement with Reed will be subject to regular review to ensure it is efficient and effective.
13. In order to manage the increasing numbers of referrals, a number of changes are being made to streamline internal systems and processes to help reduce the time taken to undertake all the work resulting from a referral. This includes:
  - implementing recommendations of the Lean+ review to reduce the length of time some processes can take. DoLS Business Support staff are already saving an average of nearly 30 minutes per referral as a result of initial changes (reducing form checks etc.). This amounts to a potential 500 hours less time required to complete the work currently on the waiting list
  - joint launch of the new shorter ADASS DoLS forms by Nottinghamshire and Nottingham City Council on 29 June 2015
  - mobilisation of the workforce through issuing of tablet devices once the above work is complete and functionality available on the devices by the end of July 2015
  - analysis of workload productivity differences and reasons for this, in line with good practice.
14. In addition to the above, the Council is seeking to offer existing BIAs the opportunity to work over and above their contracted hours on a voluntary basis, and with appropriate financial remuneration, to complete additional BIA work.
15. In order to clear the pending assessments the Council has already made arrangements with our managed agency service provider to supply the capacity assessment of 3 full time equivalent BIA workers.

### **Benchmarking and performance**

16. Councils are asked voluntarily to provide data on number of DoLS referrals to the Health and Social Care Information Centre (HSCIC) who then analyse and share the data nationally. Out of 152 local authorities, 116 submitted full data for 2014/15. The trend nationally reflects Nottinghamshire's local activity and shows that across the country DoLS applications increased in every quarter of 2014/15, with the last quarter increase being higher than the activity in any of the previous three quarterly returns.

17. All local authorities are putting plans in place to meet this significant increase in DoLS assessment referrals. An East Midlands network is in place and the group concur that broadly it takes an average of 6-15 hours to complete an assessment. This is in line with the average number of assessments completed by the central DoLS team.

### **Demand, capacity and recommended resources**

18. Based on data of increases in referrals during the last financial year, the worst case scenario is that there could be up to a further **3,200** DoLS referrals expected during 2015/16. It is possible however, that the numbers of referrals may not rise at the same steep rate as last year and on this basis it is recommended that a mediated projection of 2,500 assessments is used and that the rate is monitored and resources kept under review.
19. In order to manage this on-going increasing demand, it is proposed that staffing levels in the central DoLS team are increased from the current 6.8 fte to 20 fte BIAs on a permanent basis, with an associated increase from 5 fte to 8 fte Business Support posts manage the associated administration. It is recommended that 5 of the Business Support posts are established on a permanent basis and 3 on a temporary basis.
20. In addition to this, in order to clear the existing backlog of referrals, additional temporary funding is also required for 4 fte BIAs.

### **Key Risks and Mitigating Actions**

21. The Council needs to ensure it meets its statutory responsibilities in relation to DoLS. The key risks are potential unlawful deprivations of liberty resulting in the Local Authority being liable for costs, damages and other associated fees. This is because there is a potential breach of Article 5(4) and a right to a timely review of a deprivation of liberty. Currently when awards are made, these are calculated on the basis of "a fair and reasonable award (in so far as a monetary award can compensate) for the loss of liberty. Currently as a guide for damages courts are using an amount of between £3,000 and £4,000 per month, plus court costs. The most recent case was Essex with a total award of £138,000. To date Nottinghamshire County Council has not been subject to court proceedings. Initial contacts have been diverted through urgent sending out of a BIA.
22. It is imperative that DoLS performance is accurately measured around DoLS in order to provide national and local management information and monitor progress. Currently this relies on manual data collection and a number of Framework reports need to be written to be more efficient. This has been identified by Lean + review. It is imperative that performance criteria is inbuilt into the upgraded Framework electronic recording system (Mosaic) at the start when the system goes live and criteria is being constructed for this purpose. Currently this is priority on the Framework report writing work list.

### **Other Options Considered**

23. Alternative options to reduce the time that each referral and assessment takes to complete have been considered and, where appropriate, implemented. These are outlined in paragraph 13. Whilst beneficial, they are not sufficient alone to address the very steep recent rise in demand.

## Reason/s for Recommendation/s

24. The additional resource recommended in the report is required in order for the Council to be able to undertake the significant rise in demand for Best Interests Assessments under the Deprivation of Liberty Safeguards. This is a statutory duty of the Council.

## Statutory and Policy Implications

25. 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.

## Financial Implications

26. Committee previously approved £2m to meet increased demand for BIAs, however, only £1m has to date been accessed from reserves.
27. In recognition of the additional unfunded burden the 'Cheshire West' judgement has placed on local authorities in 2015/16, the government is giving consideration to the allocation of £25m nationally to local authorities to support the work. This was announced on 27 March 2015. Nottinghamshire's share of this is unknown at present as no further announcements have been made.
28. Prior to 1 April 2013 the then Primary Care Trusts were also Supervisory Bodies and locally transferred a small amount of funding yearly to Nottinghamshire County Council to fulfil the Supervisory Body functions on their behalf. The Local Authority became the sole supervisory body on 1<sup>st</sup> April 2013, at which time the funding from Nottinghamshire PCT ceased. It is unlikely that further NHS funding is available given a change in their supervisory body status.
29. Additional resources may be required for Mental Health Assessors, paid representatives and Independent Mental Capacity Advocates (IMCAs). Further work is required to understand demand for these services and costs.
30. Total costs of the plan:

Resource	Per annum	Anticipated cost 2015/16
1 permanent Team Manager (fte)	£50,200 pa	<b>£50,200</b>  Permanent from 1 June 2015

<b>Resource</b>	<b>Per annum</b>	<b>Anticipated cost 2015/16</b>
20 permanent BIAs (fte) in central DoLS team: <ul style="list-style-type: none"> <li>• 5 posts at Band C</li> <li>• 15 posts at Band B</li> </ul>	£852,600 pa	Band C - <b>£171,747</b> Band B - <b>£491,972</b>
3 agency BIAs <ul style="list-style-type: none"> <li>• 39 assessments per month @ £450 per assessment</li> </ul>	£210,600 pa	Due to commence 1 June 2015  <b>£157,950</b>
4 temp BIAs <ul style="list-style-type: none"> <li>• Band B</li> </ul>	£164,900pa	Due to commence 1 August (8 months)  <b>£109,933</b>
5 permanent Business Support Admin at Grade 3	£102,400 pa	<b>£102,400</b>
3 temp Business Support Admin at Grade 3	£60,400 pa	Due to commence 1 July 2015 (9 months)  <b>£45,300</b>
	<b>Anticipated cost for 2015/16</b>	<b>£1,129,502</b>
	<b>Anticipated Full Year Cost of permanent staff.</b>	<b>£1,005,200</b>

31. In the first year, the posts will be funded from within the department's reserves and future funding will be considered within the context of the MTFS.

### **Human Resources Implications**

32. Human resources implications are included in the report.

## **RECOMMENDATIONS**

That Committee:

- 1) notes the progress with actions being taken to respond to the increasing number of referrals for Best Interest Assessments (BIAs) under Deprivation of Liberty Safeguards (DoLS)
- 2) approves the permanent establishment of the following posts:

- 1 fte Team Manager, Band D, scp 42-47 (£36,571 - £38,405) and the post allocated an authorised car user status
  - 5 fte Senior Practitioner posts, Band C, scp 39-44 (£33,857 - £38,405) and the posts allocated an authorised car user status
  - 15 fte Social Worker posts, Band B, scp 34-39 (£29,558 - £33,857) and the posts allocated an authorised car user status
  - 5 fte Business Support Administrators, Grade 3, scp 14-18 (£16,231 - £17,714)
- 3) approves the following posts on a temporary basis with effect from 1 August 2015 to 31 March 2016:
- 4 fte Social Workers, Band B, scp 34-39 (£29,558 - £33,857) and the posts allocated an authorised car user status
  - 3 fte Business Support Administrators, Grade 3, scp 14-18 (£16,231 - £17,714)
- 4) receives a progress report in six months.

**David Pearson**

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### **Constitutional Comments (SLB 19/05/15)**

33. Adult Social Care and Health Committee is the appropriate body to consider the content of this report. Changes to staffing structures must be made in accordance with the Council's Employment Procedure Rules which require HR advice and consultation with the recognised trade unions.

### **Financial Comments (KAS 18/05/15)**

34. The financial implications are contained within paragraphs 26 to 31 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 and Health Committee on 12 May 2014.

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

**Electoral Division(s) and Member(s) Affected**

All.