



12 December 2016

Agenda Item: 8

REPORT OF THE SERVICE DIRECTOR, MID NOTTINGHAMSHIRE DEPRIVATION OF LIBERTY SAFEGUARDS PROGRESS REPORT

Purpose of the Report

1. To provide Members, as requested, with a quarterly progress report on actions taken to implement the Corporate Deprivation of Liberty Safeguards Strategy during Quarter 2 of 2016/17 (July to September 2016).
2. To seek approval to establish a Multi Provider Framework Agreement for the provision of additional agency Best Interest Assessor capacity to undertake Deprivation of Liberty Safeguards assessments, Mental Health Assessments and Mental Capacity Assessments.

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 Some information relating to this report is not for publication by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972, this covers information relating to the financial or business affairs of any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 a 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 during 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 the included the business case for additional resources needed to meet these pressures
 - a progress report to the Committee on 11th January 2016 provided an update on the implementation of agreed resources, the first phase of process reviews and prevention work
 - a progress report to the Committee on 18th April 2016 provided a further update, initial feedback on the Peer Review and requested approval to permanently establish 25 FTE (full time equivalent) posts and extend 3 FTE temporary posts for 12 months
 - the latest progress report to the Committee on 12th September 2016 provided a performance update from Quarter 1 of this year, further updates on strategic and operational developments within DoLS and requested approval to establish 4 FTE temporary Community Care Officer posts for 12 months.

Demand for Assessments

10. Assessment data indicates that the number of referrals received each week continues to fluctuate, but remain on an upward trend over the longer term. As at the end of September 2016 the service received an average of 61 referrals per week. This is an increase of 5 on the average number of 56 received during the previous quarter. Actual numbers of referrals received each week during Quarter 2 ranged from 49 to 81 referrals.

11. The pace in the rise in demand continues to be monitored regularly and projections revised as necessary. The ability to complete more assessments means that a greater number of renewal assessments is required. Demand for renewal assessments has started to increase more markedly during Quarter 2 and this demand is expected to increase further.
12. The service has continued to make progress in reducing the number of people waiting to be assessed. The waiting list at the end of Quarter 2 is down 6.5% on the total at the end of Quarter 1 and is down 14% on when it was at its highest level in mid-February 2016. On average, the Council is currently completing 70 assessments per week, which represents continued improvement from 66 per week during the previous quarter. 72.7% of all referrals received since the landmark Cheshire West judgement in March 2014 are now complete. This is an improvement of 4.7% on the total that was reported to Committee in September 2016. The impact of this, however, continues to be offset by more referrals being made.

Recruitment

13. 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.
14. Best Interests Assessors (BIAs) continue to be in high demand and short supply locally, regionally and nationally. Since the progress report, a further 2.5 FTE BIAs have been recruited, are in post and undertaking required training. The rolling advert and option of training on the job continues to attract people and a further 5 candidates are due to be interviewed this month. 10.8 FTE permanent BIA posts in the central team are now filled out of a total establishment of 29 FTE. It is anticipated that these posts will continue to be filled in 2017 by a mix of qualified and trainee BIAs. In the meantime, the resources associated with the vacant posts are used to backfill with agency staff.

Agency Staff

15. 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, the Council is continuing to allocate assessments to 32 pool agency BIAs who are able to offer ad hoc hours and be paid on a per assessment basis. This will continue for as long as is necessary to meet demand and clear the backlog. The average number of assessments completed in this way by Reed BIAs at the end of Quarter 2 was 29 per week. This is an increase on the average of 23 agency assessments completed per week reported to Committee in September 2016 and 21 assessments completed per week reported to Committee in April 2016. This has had a positive impact on reducing the number of cases on the waiting list.

BIA Training

16. The 3 trainee BIAs recruited since September 2016 have either begun training or will do so in January 2017. The service remains on track to train a minimum of 15 candidates per annum, staggering training throughout the year. Further training will be commissioned if vacancies are filled by trainee BIAs.

17. In addition to existing social work colleagues being trained to be BIAs as part of their learning and development, 2 FTE peripatetic worker posts will be advertised to cover short term placements into the central DoLS team from the District teams. These peripatetic social workers will have the skills and experience to work in any front line social work team and give operational managers sufficient confidence to release their staff to undertake DoLS duties without it compromising on the quality of social work practice elsewhere in the Department.

Risk assessment and prioritisation of work

18. The Corporate DoLS Strategy has been refreshed to include implementation of the recent Association of Directors of Social Services (ADASS) advice note on additional interim emergency measures and safeguards. Committee received an overview of this advice in September 2016. 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. ADASS has provided interim advice on how to best prioritise resources in the current circumstances based on principles of meeting legal requirements as far as possible, protecting those facing the greatest risk, and proportionality.
19. 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. The previous progress report presented to Committee in September 2016 contained examples of how this guidance could be applied in low priority and renewal cases.
20. Since the previous progress report was presented to Committee in September 2016, BIAs have been closely involved in developing an approach to using this guidance in Nottinghamshire. The central team successfully piloted using a revised renewal assessment form and, following some amendments as a result of feedback, the form is now being used for renewal assessments. The pilot showed that it is possible to safely complete renewal assessments without a visit, where the criteria is met and the BIA deems it appropriate.
21. Managers are working closely with BIAs to develop a safe approach that takes into account the Council's own legal advice to manage low priority cases in the backlog and the role of Community Care Officers (CCOs) will be integral to this. An initial pilot is ongoing and further implementation will also be subject to legal advice.
22. Overall, the service remains confident that implementing this advice will enable the Council to increase its capacity to complete renewal assessments, reduce the backlog and improve management of risk. 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.

Process Review

23. Following the completion of Phase 1 of the DoLS process review, which introduced the new streamlined ADASS forms, Phase 2 is now underway. Phase 2 will build on progress made during Phase 1 to enable all of the DoLS forms to be accessible for professionals online and improve the flow of information and tasks through the Council's process, which is shaped by the statutory duties and best practice in relation to DoLS. DoLS colleagues are working closely with colleagues in IT and Customer Services to ensure any revisions to the process meet the requirements of the service and reduce duplication and bureaucracy wherever possible. Much of the progress which can be made during Phase 2 will depend on the functionality of the IT solutions that are available. Committee will be updated on this work as it develops.

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.

Further ongoing work

25. In addition to effectively managing the capacity of the DoLS service, the Council's Corporate Strategy and implementation plan for DoLS has been refreshed. In addition to areas already covered in this report, the revised strategy includes the following areas of work:
- increasing the number of managers who are able to authorise DoLS assessments
 - improving how feedback is captured to measuring outcomes from DoLS assessments, highlight the added value this work brings for relevant persons and their families and where the Council can improve
 - DoLS preventative work will continue to identify opportunities to educate managing authorities in order to avoid inappropriate referrals (currently approx. 8% of total referrals).
 - monitoring updates from the Law Commission regarding any proposed changes to legislation for DoLS. It is expected that the Law Commission will publish its findings in late December 2016
 - tracking and monitoring the resources in place for community DoL where relevant persons may be deprived of the liberty in community settings.

Commencement of tender exercise for DoLS services

26. The Department launched a Soft Market Testing exercise to seek the views of external providers on how they could support delivery of the Council's DoLS Service. The

exercise opened on 7 October and closed on 28 October 2016 and was designed to help shape the Council's view on:

- whether it would be of benefit to be able to commission additional one-off agency BIA capacity for a set number of assessments to help clear the backlog whilst the permanent BIA posts are recruited to. This would be in addition to the capacity currently provided by Reed agency. The Council is now reaching its financial procurement limit regarding the quantity of service it can purchase from Reed and a tender exercise is required to put in place any further capacity. This would be a similar specification and contract to that used currently to purchase Occupational Therapy and Social Care assessments, in that once a set number is allocated to the provider by the Council, the allocation to individual agency staff and all aspects of administration would be managed by the provider. This is often referred to as a 'managed' service. The Council would undertake random sampling of work as part of its quality assurance role and retain the final say on all assessments submitted by the provider as to whether they are accepted and authorised or not.
 - the best way to implement a contract for Mental Health Assessors who support the DoLS process by providing Mental Health Assessments and Mental Capacity Assessments. This is required to support 'business as usual' work required within the team.
27. Whilst only four providers responded, the information received has increased the Council's insights into both issues. After reviewing the evidence and current performance of the central team and the Council's existing commissioning arrangements, the option which best meets the Council's needs is to commission a Multi Provider Framework Agreement with two lots, one to enable the Council to commission a 'managed' service for a set number of assessments and the other to contract providers to deliver Mental Health and Mental Capacity Assessments.
28. Commissioning additional BIA capacity as a 'managed' service for completing DoLS assessments is a viable option to pursue to help the Council to achieve its aim of clearing the backlog as quickly as possible, whilst ensuring that all relevant persons receive a legally compliant and person-centred assessment. This arrangement can work alongside growing capacity within the central team and continuing with the Council's existing corporate agency staff service provider.
29. The second lot will enable the Council to commission an increased number of Mental Health Assessors and ensure the quality of their assessments are to the required standard set by the Council. A minimum of three providers will be awarded a contract to deliver the assessments and share the work across the County. Providers will be required to carry out the assessments within a set timeframe so appropriate and available capacity to carry out the assessments will be important. There will be no guarantee of work and providers will be paid on the actual number of completed assessments carried out.
30. This approach will give the Council the required flexibility to commission the resources it needs and manage risk appropriately. It will also ensure that this commissioning arrangement is compliant with the Council's financial regulations. It is proposed that the

tender process begins in January 2017 with the aim of the Framework Agreement(s) for both lots scheduled to be in place for April 2017.

Other Options Considered

31. An option being considered prior to assessing the findings of the soft market testing exercise was to seek to establish a contract with a single provider to deliver all the services in scope. After considering the evidence and evaluating the Council's current performance, it was decided that a multi provider approach would better meet the Council's needs. The primary driver for the Council to create a framework for the provision of end-to-end assessments is to provide greater flexibility and choice in what the Council is able to commission if required. A contract with a single provider would limit flexibility and choice. With regards to Mental Health Assessments, there was not enough evidence to suggest that a single provider could provide the volume of assessors and capacity for assessments that is required.
32. Taking no action has also been considered. If the Council took no action however, it would fundamentally limit the Council's ability to complete the volume of assessments that are required. As a result, the ability of the Council to meet its strategic objectives in relation to DoLS would be compromised and progress made since the Cheshire West judgement in March 2014 would be put at risk.

Reason/s for Recommendation/s

33. 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 progress made to date shows that the Council's strategy is working and is delivering the expected results. The recommendations made within this report support the strategic decisions taken thus far and will help the Council to mitigate against risks that could undermine this progress in future.

Statutory and Policy Implications

34. 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

35. A one-off £1M is held in reserves for the purpose of reducing the waiting list and will be available during 2017/18 to commission assessments from this framework. This will be in addition to maintaining the current assessment capacity delivered through Reed. The estimated annual value Mental Health Assessment and Mental Capacity assessment work is expected to be at least £170,000. This framework will not guarantee work for any provider who successfully bids to be part of it.

36. 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.
37. The Council's modelling shows that the numbers of referrals for DoLS is projected to rise as high as 5,009 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, it has previously been projected that there would be a total yearly recurrent cost of the DoLS service of £5.05m. This projected pressure is now being reviewed in light of actual progress to date.
38. 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. It is important to note, however, that even full implementation of the interim ADASS guidance and use of the temporary reserves to address the waiting list will not put the Council in a position to have sufficient resources to meet the incoming demand for DoLS assessments that is still being anticipated within the required time-scales on an ongoing basis. This situation is kept under constant review.

RECOMMENDATIONS

That the Committee:

- 1) notes progress with implementation of the Corporate Deprivation of Liberty Safeguards Strategy.
- 2) approves the request to establish a Multi Provider Framework Agreement for the provision of additional agency Best Interest Assessor capacity to undertake Deprivation of Liberty Safeguards assessments, deliver Mental Health Assessments and Mental Capacity Assessments.

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Constitutional Comments (LM 11/11/16)

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

Financial Comments (KAS 14/11/16)

40. The financial implications are contained within paragraphs 35 to 38 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

Deprivation of Liberty Safeguards – report to Adult Social Care & Health Committee on 12th September 2016

Annual budget 2016-17 – report to Full Council on 25 February 2016.

Electoral Division(s) and Member(s) Affected

All.

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