

**11<sup>th</sup> November 2019****Agenda Item: 6****REPORT OF THE SERVICE DIRECTOR, AGEING WELL SERVICES****DEPRIVATION OF LIBERTY SAFEGUARDS (DOLS)****Purpose of the Report**

1. To update the Committee on a new statutory framework on Liberty Protection Safeguards (LPS), which will replace the Deprivation of Liberty Safeguards (DoLS) arrangements, and highlight the implications for the Council.
2. The report also provides the Committee with an outline high level implementation plan to meet the new national requirements at the earliest implementation date of 1 October 2020 and seeks approval to receive a further detailed report within the next six months.

**Information**

3. Current Deprivation of Liberty legislation applies to people who are in hospital, residential and nursing care homes who do not have the capacity to consent to their care and treatment. It provides a framework to assess mental capacity and determine what is in a person's best interest. Where care arrangements restrict people's liberties, trained social care staff ensure reasonableness and that less restrictive measures have been considered.
4. In 2013 Nottinghamshire County Council was receiving an average of 300 DoLS referrals a year.
5. In December 2014 and June 2015 reports were presented to the Committee which highlighted the impact for the Council arising from the legal judgements in relation to the Deprivation of Liberty Safeguards. These had arisen from the publication of the Supreme Court judgment in the case of P v Cheshire West, which further defined the meaning of Deprivation of Liberty and significantly expanded the number of people to whom it applied.
6. The threshold for assessment quickly became much lower than that which existed before the introduction of the Deprivation of Liberty Safeguards in 2009. In March 2014, following the Cheshire West judgement, the volumes of referrals nationally increased ten-fold within the first few years and this was against a backdrop of financial pressures. The DoLS process is very prescriptive, involves six different assessments and involves high levels of administration. Additional resources were therefore required to meet the rising numbers of referrals and meet the Local Authority's statutory duties.
7. Nottinghamshire County Council approved additional resources and a Corporate Strategy and project were established. The result was that Nottinghamshire has been able to manage down the growing waiting list for assessments. The Association of Directors of Adult Social

Services (ADASS) national interim guidance was used to risk assess and prioritise applications

8. The workload in Nottinghamshire has risen steadily to the level originally predicted in 2014. 5,000 referrals were made to Nottinghamshire County Council in 2018/19, averaging at about 75 a week. Unallocated work in Nottinghamshire averages at approximately 300 referrals at any time.

### **The benefits of DoLS**

9. There is a broad range of positive outcomes that people can experience as a result of the DoLS assessment process. It can, for example, significantly enhance people's quality of life, increase the amount of choice that people have over key decisions about their care and treatment, as well as over day-to-day decisions about their life. The following brief case studies provide some examples:

- During the DoLS process a Best Interest Assessor (BIA) may decide that a person does have the capacity to make decisions about their care and treatment. They will then make sure that the care provider listens to their preferences and choices about how they want to be looked after. Sometimes this means helping them to make the choice to return to their own home.

*Mrs P had moved from hospital into a residential care home following a sudden illness. The care home applied for a deprivation of liberty authorisation to prevent her from leaving. During the DoLS assessment, the BIA concluded that her health had improved and she had now regained the mental capacity to make the decision about where she wanted to live. Mrs P wanted to return home but her family were reluctant to agree because they thought that she would be safer in a care home. With support, Mrs P did return home safely in line with her wishes.*

- A BIA can stipulate that certain conditions must be applied to a person's care. These must be about reducing the restrictions on their liberty, for example, making sure that sedative medications are reviewed, or being helped to do activities that they enjoy.

*Mr B lives in a care home, he is deprived of his liberty because he is not free to leave and he does not have the capacity to understand or agree to this. As part of his care plan he is given sedative medications in his food. He is often at the door trying to get out. Before going into the care home Mr B would take a walk in the park every morning. The BIA applied conditions that required the care home to review his medication monthly with the prescribing GP and also to support him to take a daily walk outside.*

- A BIA can also make recommendations that a care home provider ought to follow.

*The authorisation to deprive Mr B of his liberty recommended that the care home should allow his wife to bring their pet dog to see him and that he be allowed to take his meals in his bedroom if he wished.*

- A BIA may conclude that it is not in a person's best interest to live in a particular care home, this may be for example, because the service does not have staff with the right skills to provide the necessary care or because the person's family are not close by and cannot visit.

*Mrs J has Huntington's disease. She has lived in a care home for 5 years. Her condition had progressed and she now required specialist health care. The BIA concluded that it was not in her best interests to remain in this care home because they did not have staff that were qualified to look after her, this triggered a continuing health care assessment and she was moved to a specialist facility funded by Health.*

- A BIA must appoint a paid representative to support someone who is deprived of their liberty and has no family or friends to help them.

*Mr H is a young man with a learning disability, he was in care as a child and has no contact with his family. He is deprived of his liberty because he would be at severe risk if he was allowed to go out on his own. He does not understand this and is often objecting. His paid representative visits him every 2 weeks to talk to him and listen to his concerns. The paid representative can request a review or refer to the courts if they believe that the authorisation should be appealed.*

### **The introduction of Liberty Protection Safeguards and reasons for this**

10. The House of Lords, in 2015, described the DoLS process as 'being broken and not fit for purpose, overly bureaucratic and burdensome' and the Law Commission report (2017) had confirmed the urgent need for reform to a more person-centred, timely and proportionate system. In 2019 it was reported nationally that there was a backlog of some 125,000 - 140,000 cases within local authorities. This backlog helped create the need for the Mental Capacity Amendment Bill which is seen as a much-needed overhaul of the Deprivation of Liberty Safeguards.
11. The Mental Capacity Amendment Bill successfully passed through Parliament on 16<sup>th</sup> May 2019, heralding the introduction of the new statute - Liberty Protection Safeguards (LPS) - with the national estimated implementation date being 1<sup>st</sup> October 2020 at the earliest, in order to allow time for implementation planning.
12. The new LPS framework is intended to streamline the assessment process, reduce the need for everyone to have the current high level of scrutiny and build improved assessment of what is in the best interests as an appropriate safeguard into initial planning of care packages and assessment of need. Proportionality is established as an important principle. This will still require resources, however the process and outcomes for people will be improved because the majority of work will be upfront rather than retrospective for people in the services they are provided.

### **Implications of Liberty Protection Safeguards**

13. LPS increases the responsibility for ensuring LPS safeguards are provided by more organisations and extends safeguards into children's services and to more care settings.
14. Clinical Commissioning Groups (CCGs) and Health Trusts will now share the responsibility for understanding and correctly applying the principles of the Mental Capacity Act and implementing the LPS safeguards. Therefore, they will become Responsible Bodies joining local authorities in this role. The local authority however remains the Responsible Body for the Residential and Care Home Sector and for independent hospitals.
15. Extension of the safeguards now includes 16/17 year-olds in line with the Mental Capacity Act. These are new responsibilities for the Children and Families department.

16. Supported accommodation and private and domestic settings are also now including under LPS whereas DoLS only applied to hospitals and care homes.

### High Level Implementation Plan

17. An implementation working group has already been established within the department to consider communication and training requirements for staff as well the redesign of electronic work processes and to begin work with external partners. The diagram below illustrates the work streams and task groups required to implement the new legislation:

High Level Implementation Plan	2019						2020									
Task name	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
<b>LPS Workplan &amp; Implementation Schedule</b>																
LPS Workplan & Implementation Workgroup																
Communication Strategy																
External Partner Engagement (Health & CCGs)																
Children's Services 16-17 year olds																
<b>Workforce Redesign &amp; Training</b>																
LPS Policy, Process & Guidance																
<b>Business Support Workforce Model</b>																
ICT Task Group																
<b>LPS Implemented</b>																

### New Training implications

18. One of the most significant implications of LPS will be to make the shift so these safeguards become 'everybody's business'. Whilst current Best Interest Assessors in the DoLS team will require specialist conversion training to manage the most complex work, 600-700 social care assessment staff will require training and briefings for these new arrangements. Over the next 12 months this will be a significant undertaking but will ensure that under LPS, mental capacity, best interests and liberty safeguards considerations are embedded and become part of the current Care Act Assessment and Support Planning process for all vulnerable adults.
19. The Department of Health and Social Care training triangle (attached as **Appendix 1**) also shows the training task ahead. The numbers of staff to be trained is highest at the initial care planning stage and the numbers decrease as the roles become specialist roles such as the Approved Mental Capacity Professional. Mental Capacity Act training will be extended, reinforced and, where identified as a need, supplemented into workforce training.
20. The Principal Social Worker is currently undertaking scoping and awareness raising and where gaps in training are identified training will be delivered.

21. The department intends to work in partnership with its Regional ADASS network to benefit from training events and material that will be supplied as funding is to be available for this.
22. Currently more detailed planning cannot take place until the Draft Code of Practice is produced which was expected in Summer 2019 but has been delayed. An example of this is a current lack of clarity regarding who can carry out assessments of mental capacity. It is not clear whether qualified or unqualified staff will be able to undertake this role so the responsibilities of staff and future workforce requirements for LPS cannot be determined until more detail is known. The final Code of Practice is expected in May 2020.
23. For these reasons the changes cannot be included as part of the overall departmental workforce remodelling currently underway. Once further information is available, an analysis will be completed of the roles required to fulfil the revised statutory obligations and assessment process with input from the Human Resources team. Trades Unions will be consulted appropriately.

### **Other Options Considered**

24. There are no other options to be considered as this is a change of legislation and will impose statutory obligations.

### **Reason/s for Recommendation/s**

25. A further report in the next six months will update the Committee as more detail emerges regarding the new LPS arrangements.

### **Statutory and Policy Implications**

26. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, 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, smarter working, sustainability and the environment 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**

27. Some national funding is anticipated to support implementation of LPS, however currently there are no details as to what this might be or whether it will meet the new burdens until these are clarified in the Code of Practice and Regulations. It is anticipated that there will be costs to implement LPS e.g. training. Financial implications will be covered in future reports to Committee regarding the approval of any new LPS arrangements.

### **RECOMMENDATION/S**

- 1) That Committee agrees to receive a further detailed report regarding the new Liberty Protection Safeguards arrangements within the next six months.

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**Constitutional Comments (AK 10/10/19)**

28. The recommendation falls within the remit of the Adult Social Care and Public Health Committee under its terms of reference.

**Financial Comments (AGW 29/10/19)**

29. While it is anticipated that the implementation of Liberty Protection Safeguards will have financial implications, this update report does not have any direct financial implications.

**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 1st December 2014](#)

[Deprivation of Liberty Safeguards – report to Adult Social Care and Health Committee on 1st June 2015](#)

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

All.

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