

16 April 2018**Agenda Item: 11**

REPORT OF THE SERVICE DIRECTOR, MID NOTTINGHAMSHIRE

DEPRIVATION OF LIBERTY SAFEGUARDS POLICY

Purpose of the Report

1. The report invites the Committee to recommend the revised Deprivation of Liberty Safeguards Policy, attached as **Appendix A**, to Policy Committee for approval.

Information

2. 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. 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.
3. 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.
4. On 19th 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.
5. A revised policy has been developed (attached as **Appendix A**) to take into account the transformational impact of the Cheshire West judgement and the significant reforms that have taken place in health and social care since 2010.

6. The revised policy is changed significantly from the current policy. The current policy contains a large amount of information for care homes and nursing homes that is no longer relevant. The revised policy is more clearly focused on the Council's statutory responsibilities in relation to DoLS and reflects decisions taken by the Council since the Cheshire West judgement in the Supreme Court in March 2014 regarding how the DoLS process is managed in Nottinghamshire. The 2010 policy is multi-agency and was designed with partners at Nottingham City Council and NHS organisations. A multi-agency policy is, however, no longer appropriate, following the transfer of supervisory body responsibility from primary care trusts to local authorities. This has significantly changed the roles and responsibilities of agencies who work under the Mental Capacity Act and DoLS. There is an established DoLS Code of Practice which the Council's revised policy does not seek to re-state or summarise. Therefore, the proposed policy is more concise than the current version and would be fit for purpose for practitioners and the public.
7. The revised policy covers:
- relevant legislation and supporting policies
 - roles and responsibilities of the Council and care homes, nursing homes and hospitals that make referrals for assessment
 - how the Council will record information
 - the process the Council will follow in managing DoLS assessments
 - resource implications
 - training of staff quality standards that will be followed
 - how the effectiveness of the policy will be reviewed.
8. The revised policy takes into account the initial potential recommendations of the national review of the Mental Capacity Act and Deprivation of Liberty Safeguards by the Law Commission, which was published in March 2017¹. This recommends the replacement of DoLS with an alternative scheme entitled Liberty Protection Safeguards. At the time of writing the policy, the Department of Health is considering its response to these proposals. Amendment or replacement of the proposed policy may be required at a later date should there be legislative change or updates to the Code Practice that occur as a result of the Law Commission's work or any other reforms considered by the Government in future.

Other Options Considered

9. The existing policy is no longer fit for purpose due to the significant changes in how DoLS are applied since the Cheshire West case. Many of the references in the current policy are also either out of date or redundant, for example, references to Primary Care Trusts, which have been abolished. The option of not up-dating the policy was therefore discounted.

Reason/s for Recommendation/s

10. The proposed revised and updated policy will be a useful resource for practitioners working across adult social care and health in Nottinghamshire. It will also help to improve the Council's work with partners within DoLS as it would allow the Council to demonstrate clarity in its position in how DoLS will be managed within the County.

¹ <https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/>

Statutory and Policy Implications

11. 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.

Data Protection and Information Governance

12. The policy references how data will be gathered to carry out DoLS assessments. This will continue to be done in full accordance with the General Data Protection Regulation (GDPR) (2018).

Financial Implications

13. There are no direct financial implications that would result from this policy. However, the policy does reference the unprecedented challenge to ensure resources are in place to meet demand for DoLS assessments.

Human Resources Implications

14. There are no direct Human Resources implications that would result from this policy. An up to date policy would benefit staff as it would facilitate discussion between colleagues and other stakeholders about DoLS.

Public Sector Equality Duty implications

15. An Equality Impact Assessment (EIA) has been completed and is detailed in section 12 of the policy.

RECOMMENDATION

- 1) That Committee recommends the revised Deprivation of Liberty Safeguards Policy, attached as **Appendix A**, to Policy Committee for approval.

Sue Batty
Service Director, Mid Nottinghamshire

For any enquiries about this report please contact:

Daniel Prisk
Strategic Development Manager
T: 0115 9774896
E: Daniel.prisk@nottscc.gov.uk

Constitutional Comments (LM 19/03/18)

16. The Adult Social Care and Public Health Committee is the appropriate body to consider the content of the report.

Financial Comments (AGW 19/03/18)

17. The financial implications are contained in paragraph 13 of this report.

HR Comments (MS 09/03/18)

18. There are no direct HR implications as a result of this policy.

Background Papers and Published Documents

None.

Electoral Division(s) and Member(s) Affected

All.

ASCPH541 final