



# **Adults and Safer City Scrutiny Panel**

## **7 November 2017**

Date 25.10.2017

## **Briefing Paper**

To: The Chair, Councillors of Adults and Safer City Scrutiny Panel

### **Title: Deprivation of Liberty Safeguards (DoLS)**

#### **a) Background**

The briefing paper seeks to provide the panel with an update on the legislation regarding Deprivation of Liberty Safeguards (DoLS), including local arrangements and performance in Wolverhampton. The briefing paper also seeks to outline some of the impending issues both locally and nationally that will need to be considered to ensure adequate safeguards are in place for adults who lack mental capacity to consent to their accommodation, care and treatment in our City.

#### **b) Key Issues**

The Mental Capacity Act 2005 - Deprivation of Liberty Safeguards (DoLS), came into force in England and Wales in April 2009 to offer legal protection to people who lack mental capacity to receive care in registered care homes or hospitals. The aim was to ensure that if a person's life is so restricted that they have been deprived of their liberty, there should be an independent assessment leading to the authorisation of the deprivation.

In March 2014, the Supreme Court published its judgement in the case of [P v Cheshire West](#) and another, and [P and Q v Surrey County Council](#). This significant judgement transformed the understanding of who required a DoLS authorisation. Since the 'Cheshire West Ruling', almost everyone who is in hospital or a care home and unable to give a valid consent to being there, now requires a DoLS assessment to be completed and authorised by the Supervisory Body (City of Wolverhampton Council).

It is fair to say that every Council across the country is finding the ability to meet DoLS demand, in its current format, challenging. City of Wolverhampton Council agreed significant short term investment to clear the backlog of DoLS referrals this year. The backlog of assessments previously stood at 253 in January 2017. The backlog of assessments had been reduced to 17 cases.

The DoLS assessment process requires six assessments to be completed, four by the Best Interest Assessor (BIA) employed by the Supervisory Body – City of Wolverhampton. The four assessments are confirmation of Age, No Refusals, Mental Capacity and Best Interests.

An independent Mental Health Assessor (Doctor) is required to complete the other two assessments confirming Eligibility and Mental Disorder diagnosis.

The Supervisory Body – City of Wolverhampton Council, is responsible for co-ordinating all six assessments and paying for the Mental Health Assessor (MHA) reports. The MHA reports cost £175 each (not including travel costs). The Supervisory Body is also responsible for ensuring that an Independent Mental Capacity Act (IMCA) advocate is available to the person or a Paid Person's Representative – this is a safeguard to provide challenge against the DoLS where necessary. This is a further financial cost to the Supervisory Body.

### **City of Wolverhampton DoLS Performance**

Table 1

2017	April	May	June	July	Aug	Sept
<b>DoLS Applications Received</b>	54	60	69	92	102	81
<b>Current Authorisations in Force</b>	457	470	494	472	524	562
<b>Current Applications Awaiting Assessments</b>	211	172	86	44	91	17
<b>Applications in Breach</b>	175	157	47	23	70	12

Table 1 above illustrates local DoLS Team performance April - September 2017. Referrals considerably increased in Q2. Based on current referral rates, DoLS are forecast to reach 950 authorisations in force in 2017-2018. Every authorisation must be renewed annually as a minimum. The ability of the DoLS Team to sustain this performance level within available resources is under review.

The backlog (applications awaiting assessment) has reduced from 211 to 12 between April and September 2017. This has been achieved by better business as usual performance and the backlog of assessments being completed by an external agency. This was achieved with increased short term investment for this year. The numbers of applications in breach (applicants unlawfully deprived of their liberty whilst awaiting assessment), has reduced from 175 in Q1 to 12 in Q2. The team has implemented a shorter renewal form, (an ADASS ratified form), that aims to expedite the current review process.

Between January and March 2017, Court of Protection applications relating to deprivation of liberty in supported living placements has also increased by 43% on the equivalent quarter in 2016. The table below illustrates this.

Figure 10: Deprivation of Liberty applications, January to March 2008 to January to March 2017 (Source: Table 20)

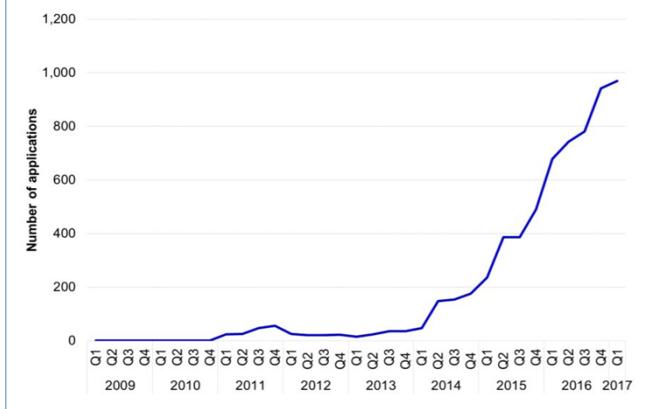


Figure 10 Ministry of Justice, National Statistics, Family Court Statistics Quarterly, England and Wales, January to March 2017 available at: <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-january-to-march-2017>

## Risks, development and challenges

The Local Authority is legally required to act as the Supervisory Body in accordance with Schedule A1 to the Mental Capacity Act 2005. The statutory instrument - Mental Capacity, England – 2008 – No. 1858 contains the regulations for the Deprivation of Liberty Safeguards.

The Law Commission have completed a comprehensive review of the DoLS process and published their report in the Spring 2017. Following public consultation, the [Law Commission has recommended replacing DoLS with a new scheme - Liberty Protection Safeguards](#) as it deemed the current process not fit for purpose. According to the Law Commissions report, full compliance with the Supreme Court's decision in *Cheshire West* would now cost an estimated £2.155 billion per year if fully compliant.

It is anticipated that the Law Commission's recommendations will not be processed by Government in the next two years due to the heavy legislative work schedule linked to Brexit. Therefore, the current system appears unlikely to change imminently.

On 2 May 2017, four councils lost a High Court challenge against the Government regarding funding for DoLS, [R \(Liverpool City Council and ors\) v Secretary of State for Health \[2017\] EWHC 986](#). It is fair to say that all Supervisory Bodies find the demands of the DoLS process in its current format a significant financial and resource intensive challenge. The short-term investment the City of Wolverhampton Council made this year to clear the backlog is significant, other Councils have chosen not to do so and many continue to report a backlog of applications in breach of an authorised DoLS being in place.

## Summary

The Deprivation of Liberty Safeguards Team aim to monitor, review and complete assessments with an expedited process to manage demand with the resources available. The members of the team continually aim to ensure that all assessments are managed within lawful processes and follow best practice guidance.

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Changes to the DoLS process as recommended by the Law Commission regarding Liberty Protection Safeguards, (or any interim measures Government may implement), will require action.

It is noteworthy that referrals continue to rise therefore local performance, resources and capacity will need to continue to be reviewed as this trajectory continues.

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