



Coventry City Council

## Briefing Note

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**To**  
Health and Social Care Scrutiny Board (5)

**Date**  
03 November 2015

**From**  
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**Subject**  
Deprivation of Liberty Safeguards

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### **Purpose of briefing note**

To provide information on the current challenges facing the City Council regarding Deprivation of Liberty Safeguards (DoLS) in order to enable onward briefing to MPs as this is an area of significant additional pressure and risk to local authorities following a Supreme Court ruling in 2014.

### **Recommendations**

Scrutiny Board 5 are recommended to:

1. Note the issues facing the City Council regarding Deprivation of Liberty Safeguards

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

The Deprivation of Liberty Safeguards (DoLS) are part of the Mental Capacity Act 2005. They aim to make sure that people in care homes and hospitals are looked after in a way that does not inappropriately restrict their freedom. The safeguards should ensure that a care home or hospital only deprives someone of their liberty in a safe and correct way, and that this is only done when it is in the best interests of the person and there is no other way to look after them.

If all alternatives have been explored and a hospital or care home believes it is necessary to deprive a person of their liberty in order to care for them safely, then they must get permission to do this by following strict processes. These processes are the Deprivation of Liberty Safeguards, and they have been designed to ensure that a person's loss of liberty is lawful and that they are protected.

## **Why this has become an issue for Local Authorities**

On 19 March 2014, the Supreme Court handed down a judgement in the case of “P vs Cheshire West and Chester Council and another” and “P vs Q V Surrey County Council”. It said that if a person is subject both to continuous supervision and control, and not free to leave, they are deprived of their liberty.

***What changed as a result of this is that the ruling said that even if people were not openly trying to leave or were showing no signs of this that this no longer mattered – an assessment against Deprivation of Liberty Safeguards still had to happen. Essentially ‘a gilded cage is still a cage’.***

A test known as the “acid test” was introduced which is as follows:

- A person is deemed to lack capacity to agree to care, treatment and residency
- They are not free to leave their residency
- They are under continuous care and control of people engaged to care for them

The purpose of the “acid test” is used to determine if a person is potentially being deprived of their liberty. If the acid test is met then a DoLS application has to be made.

## **The national position**

***The Health and Social Care Information Centre (HSCIC) have reported that in the first nine months since March 2014 there had been a ten-fold increase on previous national activity levels relating to DoLS following the judgement.***

In recognition of the very significant increases in activity, on 27 March 2015 the Department of Health announced one off funding of £25m towards the cost of DoLS in 2015/16 (Coventry received £165k of this funding). In contrast, the Law Commission published a report in August 2015 that calculated the cost of fully implementing the judgement is likely to be £1.59bn compared to current costs of £118m.

## **The local position**

Coventry has experienced a significant increase in referrals as demonstrated below during the last year, which is continuing into 2015/16. The huge increase following the ruling in 2014 equated to a 458% increase in comparison to the prior 2 years for Coventry. The expected demand in 2015/2016 is expected to be circa 1200 applications, ten times that experienced in either 2012/2013 or 2013/2014. Once a case has been assessed and authorised if a deprivation remains in place there is a requirement to review within a year.

	2012/2013	2013/2014	2014/2015
Number of DoLS applications received in year	121	122	681
Percentage (%) increase in comparison to prior year	-	1%	458%

To manage the situation caused following the Supreme Court ruling Coventry has undertaken a range of actions to manage activity including the creation of a small team to focus on this work, commissioning an external organisation to undertake assessments on behalf of the City Council and training a number of existing staff in the skills required.

Aside from the £165k Coventry received as one-off national funding announced no additional resources have been provided to manage the impact of the judgement. Internally, resources have been diverted from other areas of Adult Social Care to support the situation which is simply not sustainable considering the significant financial pressures on the City Council.

***Based on expected levels of activity Coventry is likely to have an unfunded budget pressure of between £300k and £400k for 2016/17 and subsequent years.***

### **Law commission review and consultation**

The Law Commission were commissioned to undertake a review of current Mental Capacity and Deprivation of Liberty legislation. Originally the Law Commission was expecting to report on the outcome of the review in 2017, however because of the challenges presented by the 2014 ruling have brought this forward to 2016.

The proposal following this review is that current DoLS be replaced by a system of 'protective care', applicable to anyone aged 16 and over and designed to cover all care settings, such as care homes, hospitals, supportive living and domestic arrangements. The nature and extent of the safeguards required will vary according to the care setting and the level of restrictions imposed, and will only apply if the person lacks capacity to consent to the proposals for their care and treatment.

The proposals would create a new, bespoke system for hospital settings essentially enabling a registered medical practitioner to authorise a deprivation of liberty for up to 28 days when care and treatment is being provided for physical disorders.

There is no specific date or timescales for the implementation of these proposals to the current DoLS requirements remain in place for the time being. There is also uncertainty regarding the demand and costs that would materialise should the Law Commission review be implemented.