
Cabinet Member for Adult Services

11th October 2018

Name of Cabinet Member:

Cabinet Member for Adult Services - Councillor F Abbott

Director Approving Submission of the report:

Director Adult Services (People Directorate)

Ward(s) affected:

All

Title: Deprivation of Liberty Safeguards - Meeting the Challenges

Is this a key decision?

No. Although the matter within the Report can affect all wards in the City, it is not anticipated that the impact will be significant and it is therefore not deemed to be a key decision

Executive Summary:

Deprivation of Liberty Safeguarding is a statutory function for the Local Authority and supports the most vulnerable individuals. Deprivation of Liberty Safeguards (DoLS) were introduced in 2009. Initial demand on resources was lower than expected and only rose marginally until a Supreme Court Judgement in 2014 which resulted in a 10 fold increase in activity across all Local Authorities.

DoLS applies from 18 years and outlines the process by which an individual can be deprived of their liberty. It applies to individuals who lack capacity (as defined by the Mental Capacity Act and following formal assessment) to make decisions relating to their residence, their wellbeing and care and treatment.

Coventry City Council has a statutory responsibility for Deprivation of Liberty Safeguarding (DoLS) assessments. Due to the ongoing increases in the number of requests for DOLS being received it has been necessary to review the way the service is currently meeting demand. This report identifies a number of amendments to practice and processes in order to address the increasing pressure on the service and associated budget which will move away from a best practice approach but will ensure we remain compliant with our statutory duties and our available resources.

Recommendations:

The Cabinet Member is requested to approve the recommendations to:

- a) Procure external agency support to the value of 50 assessments per month, subject to the outcome of a tendering process
- b) Support the measures being taken to improve our ability to respond to demand associated with Deprivation of Liberty Safeguards

List of Appendices included:

None

Background papers:

There are no background papers.

Other useful documents

There are no other documents.

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

Report title: Deprivation of Liberty Safeguards – meeting the challenges

1. Context (or background)

- 1.1 The Deprivation of Liberty Safeguards (DoLS) are part of the Mental Capacity Act 2005 and were introduced in 2009. 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.
- 1.2 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, which have been designed to ensure that a person's loss of liberty is lawful and that they are protected.
- 1.3 DoLS applies from age 18 and outlines the legal process by which an individual can be deprived of their liberty. It applies to individuals who lack capacity (as defined by the Mental Capacity Act and following formal assessment) to make decisions relating to their residence, their wellbeing and care and treatment.
- 1.4 Issues surrounding DOLS came to the forefront on 19 March 2014, when the Supreme Court handed down a judgement in the cases of "P vs Cheshire West and Chester Council and another" and "P vs Q V Surrey County Council". It said that if a person lacks capacity to decide upon their residence for the purposes of receiving care and treatment, is subject both to continuous supervision and control, and not free to leave, they are deprived of their liberty.
- 1.5 What also 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 wishing to leave that this no longer mattered – an assessment against Deprivation of Liberty Safeguards was still required. As stated by Lady Hale 'essentially a gilded cage is still a cage'.
- 1.6 Deprivation of Liberty Safeguarding is a statutory Local Authority function and whereas on initial introduction in 2009 the resource requirement was relatively low following these rulings there has been a 10 fold increase across all Local Authorities. In Coventry the increase in applications has risen year on year from 122 requests in 2013/14 to 2,248 requests in 2017/18.
- 1.7 As well as new referrals, applications require annual renewal which also increases the resource requirements on the local authority on an annual basis as long as the deprivation remains in place. Significantly approx. 60% of requests are to renew DoLS
- 1.8 There are also statutory guidelines for the consideration of applications for DoLS for which performance is reported via an annual statutory return. These returns indicate that most authorities are challenged in meeting the legislative requirements of DoLS.
- 1.9 The Government does recognise that the current DoLS process is overly bureaucratic, confusing, time consuming and expensive to deliver. The Law Commission has worked on proposals for new legislation and the Government responded on Wednesday 4th July 2018 publishing the Mental Capacity (Amendment) Bill. This proposes overhauling of the current DoLS system, but even if approved is unlikely to be introduced until late 2019 or early 2020.

- 1.10 There is no definition of what constitutes a Deprivation of Liberty and therefore the Cheshire West Supreme Court Judgement of 2014 still stands. However, the proposals being consulted on are expected to generate a reduction in expenditure for the Local Authorities by shifting responsibility to other providers, impacting on key partners and providers across the City.

Current Position

- 1.11 Recognising the additional demand on Local Authorities arising from the Cheshire West judgement the Council supported Adult Services by identifying an additional resource of £400k per annum in the budget setting process in 2016/17.
- 1.12 Additionally, the Association of Directors of Adult Services (ADASS) has sought to support local authorities through the production of best practice guidance and advice on managing DoLS. Coventry has adopted this guidance.
- 1.13 The Coventry Safeguarding Adults Board (CSAB) established a task and finish group in 2015 in order to ensure that Coventry were dealing appropriately with DoLS and the challenges presented. Following initial challenges in adjusting to meet the much greater demands as a result of the Cheshire West judgement the Board were satisfied that the required changes were made. CSAB continues to have periodic oversight of DoLS but it is clear that this is a City Council responsibility.
- 1.14 In terms of current operation, a DoLS specific team is in place with a team leader and 8 qualified Best Interest Assessors that complete assessments. In addition, the team has some administrative support. The authorisation role is also undertaken by a range of social workers and managers across Adult Social Care but not dedicated to the DoLS team. Additional capacity to deliver the volume of assessments required is also sourced externally. Assessments over and above the capacity of the City Council Team is allocated through formal contract to a social work agency to complete the DoLS assessments. Initial requests are logged, medical assessment requested by the DoLS Team and once completed this is then sent to the agency to complete the Best Interest Assessment. On return the assessments are authorised by Council officers representing the "Supervisory Body" which provides a level of scrutiny and assurance.
- 1.15 In the last year alone the service has seen a 29% increase in activity (the second highest number of applications in the region) and despite the additional resourcing and service improvement work previously undertaken to respond to demand issues the service remains extremely challenged in responding appropriately. It has therefore been necessary to review the DoLS service and make recommendations for an appropriate solution to what is for now at least an ongoing situation.

2. Options considered and recommended proposal

- 2.1 Although the City Council's performance in respect of DoLS is comparable with other West Midlands authorities the resource commitment required to maintain this performance is not sustainable within current budgets and at current levels of demand. To address this position a number of operational changes have been made and are in progress these include:
- Increasing the current threshold for assessment at UHCW and aligning this to the standard authorisation process where possible. Thresholds established by ADASS require prioritisation of requests for acute hospitals over and above community provision with all cases treated as urgent. It is proposed that revised thresholds would be introduced which include triage at the point of referral and monitoring. This would remove unnecessary assessments (based on recovery/discharge) for both BIA and Doctors but would ensure assessment and authorisation for those where it is required. This is outside the ADASS best practice guidance but the revised process would be

consistent with the statutory framework and it enables the service to target those most in need and apportion risk more appropriately within and across the services

- Increase capacity for assessments through enabling internally qualified staff to undertake additional assessments outside of their contracted hours. The employees concerned would then be required to claim the additional hours as an overtime payment for the hours worked. This would allow those staff who are wanting to maintain competence in this specific area to support the service.
- Revise the initial review to take place within the 12-month period utilising the existing BIA and Medical assessments and introducing a light touch review. The review would cover the 6 eligibility assessments required, would be face to face but would reduce the level of paperwork involved to one form signed off by the BIA and authorised by the Authorising Manager. This will reduce the assessment time frame and eradicate the need for additional medical assessment. In context an adult admitted to UHCW who then is supported by the discharge to assess pathway before permanent admission has one, as opposed to three assessments. The approach is compliant with the Legal framework but again sits outside of the best practice guidance of ADASS. Where there appears to have been a change in the individual's circumstances then a new assessment would be completed.
- Implement an electronic referral and assessment process which will enable the linking of processes and create automated sign off letters reducing processing activity and increasing efficiency.
- Those assessments that are reported as withdrawn currently include; those that are sent to us in error, duplicate forms completed when we have received incomplete information and send a duplicate rather than populating the original – discounting these would reduce our withdrawn figures by approximately 80% and also reduce administrative activity associated with this.

2.1 In addition, further options have been considered that seek to address both resourcing and scope of the function based on a minimum legal compliance basis and not best practice. These further options with recommendations are detailed below:

- **Option 1 - Recommended Option -- Continue to outsource 50 assessments per month and support operational changes detailed above.**

It is recommended that the Council enter into a tendering process to secure agency assessment to a ceiling of 50 per month for a period of 12 months with a 12 month extension possible to account for the potential changes to DoLS currently being consulted on. The existing pathways, authorisations and assurance process would remain in place.

Implementing this option and continuing to utilise external agency support for 50 Best Interest Assessments per month would ensure that our authorisation process is more closely aligned to the proposed model currently being consulted on and assessment activity would be reduced significantly achieving proportionality.

Implementing this option alongside the operational changes to processes and practice described above would reduce costs and also benefit recipients and families by introducing simpler and condensed paperwork. These changes comply with the Mental Capacity Act principles and legal framework set out in the Deprivation of Liberty. However, revised processes are not aligned to the ADASS Guidance and is therefore below a best practice standard. In taking the position of not providing a best practice standard the Council will be helping to ensure it is able to meet its statutory obligations to more people within the resources available than would be possible through a best practice approach which requires more resource per person.

- **Option 2 - Not Recommended - Increase the current number of assessments carried out by the external agency to 100 per month**

Increasing the number of assessments carried out by an external agency would significantly reduce waiting lists and would enable a best practice approach to continue. This option would enable the City Council to maintain governance of the process. An increase in costs would be incurred as a result of this option in order to maintain service delivery increasing the current overspend. This would be significant and not budgeted so would require a commensurate saving to be delivered elsewhere in order to fund.

- **Option 3 – Not recommended - Outsource all Best Interest Assessments to one agency via a tendering process.** The City Council could cease to provide this service in-house and outsource the entire process to an external agency. This would involve a tendering process and would possibly lead to a TUPE transfer of staff who are currently either mainly or wholly engaged on Best Interest Assessment duties.

This approach would achieve an ongoing reduction in overheads for the City Council as posts would be deleted and headcount reduced, however, any potential cost reductions would be at least partially offset through increased external contract costs. Through this option the City Council would continue to have oversight of the DoLs process from a commissioning and clinical perspective.

There are however, a number of other potential risks associated with this approach:

- Approved Mental Health Practitioners (AMHP) would be included in the group of staff for which TUPE would apply and this would create a significant risk to the delivery of urgent mental health statutory provision.
- Consultation, tendering and TUPE processes would be lengthy and resource intensive and considering the impending legislative changes little benefit may be achieved

3. Results of consultation undertaken

- 3.1 Consultation on the proposal is not required as recommendations do not include option 3. Key partners have been made aware of the changes and CSAB have been briefed. University Hospital Coventry and Warwickshire have been engaged and are supportive of the operational changes.

4 Timetable for implementing this decision

- 4.1 Implementation on the revised review and assessment process will take effect from 1 November 2018 whereas the implementation of the electronic based system is anticipated to be in place by April 2019.
- 4.2 Entering into a new contract for the provision of assessments is likely to be complete by 01/04/2019

5 Comments from the Director of Finance and Corporate Resources

5.1 Financial implications

The 2016/17 budget report allocated a further £400k of resources to support delivery of DoLs following the national changes outlined. With the increasing demands on the service, even with these additional resources there was an overspend of £142k relating to DoLs in

2017/18 which if demand continues to increase will continue to rise if no further action is taken.

5.2 Legal implications

The current statutory framework has become burdensome and expensive for local authorities to administer and so an overhaul of the system is being proposed, in the form of the Mental Capacity (Amendment) Bill. This is currently being debated in Parliament but it is unlikely that any significant changes will be made to the framework for DoLS before late 2019 or early 2020.

The proposal detailed in this report has been subject to legal review. Areas of compliance have been considered and amendments made to secure statutory compliance.

6 Other implications

The revised process sits outside of the ADASS guidance but adheres to the principles of statute in relation to deprivation of liberty safeguards. This proposal is consistent with the proposals of the Mental Capacity Amendment Bill and is therefore aligned to Government proposals in relation to future Local Authority delivery.

6.1 How will this contribute to the Council Plan?

This proposal will support the Council Plan and the organisation's strategic vision by enabling the service to protect the most vulnerable people living in our city and improving the quality of life for our citizens.

6.2 How is risk being managed?

Key risks and benefits are outlined in each of the options available. Core principles of safeguarding the most vulnerable have been considered at each point and the measures detailed in this report provide increased management of assessment activity, improved and proportional response and utilises the City Council staffing and financial resources more effectively.

The Service has introduced a triage system to ensure urgent cases are assessed and authorised as appropriate.

There are significant financial risks associated with DoLS given the substantial growth since the 2014 judgement. Oversight of expenditure is delivered through regular monitoring activities. Significant overspend is associated with the delivery of DoLS and will be offset in part through the options outlined but does not mitigate the anticipated further growth in this area.

Coventry Safeguarding Adults Board continues to be frequently briefed on issues relating to DoLS and levels of risk.

6.3 What is the impact on the organisation?

The current staffing arrangements would continue and in addition other appropriate Adult Social Care social work practitioners would be invited to undertake additional assessments in their own time, e.g. at weekends and evenings. This would be based on a casual

arrangement and would supplement the assessments undertaken internally and by external agency workers. The introduction of an electronic referral and assessment system would be facilitated by the Business Systems Team, with support from Performance Management colleagues. The city council's statutory responsibilities would continue to be met.

6.4 Equalities / EIA

As a result of the recommendation being to amend the application of process there is no significant change to the current arrangement to require amendments to the existing ECA.

6.5 Implications for (or impact on) the environment

There are no implications for (or impact on) the environment.

6.6 Implications for partner organisations?

There are limited implications for partner agencies with the exception of University Hospital Coventry and Warwickshire where minimal change will impact on the numbers of assessments completed. Triage systems in place mitigate the risk and urgent authorisations for 7 days (extending to 14) will ensure that patients subject to deprivation have oversight from the City Council.

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