

Open report on behalf of Glen Garrod, Director of Adult Social Services

Report to:	Adults Scrutiny Committee
Date:	9 September 2015
Subject:	Deprivation of Liberty Safeguards (DoLS) Status Report

Summary:

The Cheshire West Judgement in March 2014 has had a significant impact for the Deprivation of Liberty Safeguards both nationally and locally. As the safeguards are now considered unsustainable, the Law Commission have been asked to review the safeguards but they have indicated that it will take at least three years for the legislation to change. Appendices A and B provide further detail on how the current scheme works and, what is in the consultation proposals.

The number of applications to the council to authorise deprivation has risen dramatically since the judgement was passed. As far as the author of this report is concerned, the safeguards are being managed as well as can be expected given the circumstances through a system which prioritises cases so the most important are dealt with first.

Recommendations

Members of the Adults Scrutiny Committee are asked to note and comment on the report as detailed.

1. Background

The Mental Capacity Act 2005 provides a statutory framework for acting and making decisions on behalf of vulnerable adults who lack the mental capacity to do so for themselves. The Act itself was derived from two particular elements of law - Human Rights legislation and the Mental Health Act.

The Act came into force in October 2007 and the government has subsequently added new provisions to the Act in 2010; these provisions are known as the Deprivation of Liberty Safeguards (DoLS).

The legislation has decreed that the deprivation of a person's liberty is a very serious matter and should not happen unless it is absolutely necessary and in the best interests of the person concerned. It should never be an arbitrary decision.

The purpose of the DoLS is to ensure that any decision to deprive someone of their liberty is made following very defined legal processes and in consultation with the relevant authorities.

The adults most likely to require protection from the safeguards are those that have significant learning difficulties, those with dementia or brain injury.

When a care home or hospital form the view that they may be depriving an individual of their liberty the home or hospital have to, by law, apply to the local authority to be able to lawfully deprive someone of their liberty. The local authority will then commission a prescribed six assessments, three from a Mental Health Doctor and three from a Best Interests Assessor to fulfil the process. If the deprivation is occurring, we will authorise the deprivation and manage the process whereby the deprivation is reviewed as required according the best interests assessment.

In the first year of the standards being enforced LCC authorised 53 deprivations, in 2012 we authorised 159 applications.

In March 2014, a Supreme Court Judgement triggered an unprecedented rise in applications to authorise DoLS in England and Wales. From April 2014 the LCC DoLS team have been receiving on average, 163 applications *per month*. This has had consequences on the Judicial System, the Coronial Service and on all upper tier local authorities.

The Judgement also extended the deprivation to those individuals who are residents in community supported living and shared lives type accommodation, therefore extending the amount of people who could be subject to the DoLS.

The impact for the Authority is mainly financial with reputational risk as well. Although we are not complacent about the reputational risk, in the cases where we have appeared in court, the judges have been sympathetic about the fact that we are working in very difficult circumstances. The pertinent issue to the Council is the increased financial cost because of the extraordinary increase of DoLS applications.

To risk manage the safeguards we have tabled the Judgement at the Lincolnshire Safeguarding Adults Board, so that all partners have been made aware of the likely impact of this court ruling in their organisations. We have devised a risk management tool that we use to screen all new applications, so that the highest priority ones can be fast tracked. We have also shared this screening tool with all relevant partners. We have taken the DoLS cases to the Court of Protection that are the highest priority and will continue to do this on a priority needs basis.

The law commission has subsequently been asked to review this piece of legislation and it has started this process by publishing a consultation in July 2014. This consultation document proposes to radically change the existing scheme of authorisation because post Cheshire West, the scheme is considered unsustainable.

The Commission have reinforced a view that this consultation will not produce a 'quick win' envisaging the timescale before implementation of a new system to be at least three years.

2. Conclusion

The DoLS team are working closely with legal services to ensure we are risk managing the situation as well as we can. We are also closely managing our service provider who provides the Best Interests Assessors so we know that we have enough Mental Health professionals to achieve this role.

The Law Commission proposals to amend the mental capacity legislation are currently out for consultation and contain a number of significant changes – many appear designed to address the consequences of the Cheshire West judgement and make the protection of safeguards around liberty for people who lack capacity more proportionate and, sustainable.

3. Consultation

a) Policy Proofing Actions Required

Not applicable

4. Appendices

These are listed below and attached at the back of the report	
Appendix A	Deprivation of Liberty Safeguards under the Mental Health Capacity Act 2005
Appendix B	Briefing – Law Commission Proposals (for members)

5. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by Mandy Cooke, who can be contacted on 01522 554067 or Mandy.Cooke@lincolnshire.gov.uk.

