

Local Members' Interest

N/A

Safe and Strong Communities Select Committee – 9th November 2016

Deprivation of Liberty Safeguards

Recommendation

1. The Select Committee to consider and provide their views on the Deprivation of Liberty Safeguards: update on the impact of central government cuts on assessments.

Report of Cllr Alan White, Cabinet Member for Health, Care and Wellbeing

Summary

What is the Select Committee being asked to do and why?

2. The Safe and Strong Communities Select Committee is being updated on the progress relating to the Deprivation of Liberty Safeguards.

Report

Background

3. The Deprivation of Liberty Safeguards (DoLS) provide protection for the most vulnerable people living in residential homes, nursing homes or hospital environments; they enshrine in law the requirement that care will always be provided in a way that is consistent with the human rights of people lacking capacity, who are not otherwise protected or safeguarded through the use of the Mental Health Act or Court of Protection powers.
4. DoLS apply to anyone:
 - a. aged 18 and over
 - b. who suffers from a mental disorder or disability of the mind – such as dementia or a profound learning disability
 - c. who lacks the capacity to give informed consent to the arrangements made for their care and / or treatment and
 - d. for whom deprivation of liberty is considered, after an independent assessment, to be necessary in their best interests to protect them from harm.
5. The safeguards cover patients in hospitals and people in care homes registered under the Care Standards Act 2000, whether placed under public or private arrangements.

6. The safeguards are designed to protect the interests of an extremely vulnerable group of service users and to:
 - a. ensure people are given the care they need in the least restrictive way
 - b. prevent arbitrary decisions that deprive vulnerable people of their liberty
 - c. provide safeguards for vulnerable people
 - d. provide them with reviews and rights of challenge against unlawful detention
 - e. avoid unnecessary bureaucracy
7. If there is no alternative but to deprive such a person of their liberty, the Safeguards say that a hospital or care home (the Managing Authority) must apply to the local authority (the Supervisory Body) for authorisation.
8. Good practice dictates that DoLS should only be put in place where it is absolutely necessary and for the shortest period of time, with a maximum authorisation of 12 months.
9. On 19th March 2014 the Supreme Court delivered its judgment on *P v Cheshire West and Chester Council* and *P & Q v Surrey County Council* in which it considered Deprivation of Liberty. The ruling means that substantial numbers of people who lack the capacity to make a decision about their admission to hospital or placement in a care home will now be considered to be deprived of their liberty.
10. It is clear that the intention of the Court was to extend the safeguard of independent scrutiny. They said that “a gilded cage is still a cage” and that “we should err on the side of caution in deciding what constitutes a deprivation of liberty”.
11. The Court has now confirmed that there are two key questions to ask, which they describe as the ‘acid test’:
 - a. Is the person subject to continuous supervision and control? and
 - b. Is the person free to leave? (This is no longer just about a person saying they want to leave or attempting to leave and now includes if they would be stopped if they did try to leave).
12. This means that if a person lacks capacity, is subject to both continuous supervision and control and not free to leave they are deprived of their liberty and an authorisation from the local authority should be sought.
13. The Court also indicated that the following are no longer relevant when deciding if a person is deprived of their liberty:
 - a. The person’s compliance or lack of objection;
 - b. The reason or purpose for the placement / admission or restriction
 - c. Comparison with what you would expect for someone in a similar situation.
14. Referrals for DoLS up until March 2014 had been steadily increasing; this increase was met by training additional assessors across all the partner agencies.

15. DoLS application data

2009-2010	69
2010-2011	123
2011-2012	168
2012-2013	208
2013-2014	289
2014/2015	2213
2015/2016	3341

Additional DoLS grant

16. As a response to the surge in DoLS referrals (nationwide) the Department of Health provided a grant in 2015/2016 in Staffordshire this amounted to £377,000 this allowed Staffordshire to commission assessments through a social work agency and the backlog on outstanding assessment was kept to a minimum

National Picture

17. Nationally in 2015/2016 **195,840** DoLS applications were received by Local Authorities this compares to the national data from 2013/2014 with **13,715** DoLS applications. Regionally the data varies with the lowest level of DoLS applications in London with the highest in the North East. In the west midlands this amounted to 450 applications per 100,000 adult population 105,055 applications were completed by Local Authorities of which 73% were granted leaving 90,785 not assessed.

Current situation

18. As of 30th September 2016

Referrals	1817
Overall backlog	2687

Prioritisation tool

19. ADASS issued a note in November 2014 regarding DoLS and gave guidance on using a prioritisation process in order to identify the risk and complexity of DoLS applications. Staffordshire use a prioritisation tool which classifies applications into three groups high, medium and low priority. This is completed by examining the application data and matching this information to the prioritisation tool.

Current Situation in Staffordshire

20. A report was presented to SLT on the 25th April 2016 and pre cabinet on the 4th May 2016 with an options appraisal the decision taken by SLT and pre cabinet was to focus resource on those individuals who meet the criteria to be considered high priority applications all other applications are unlikely to be assessed.

Applications		1817
High priority		488 (26%)
Medium priority		399 (22%)
Low priority		905 (52%)
Assessments completed (high priority)		268
Backlog high priority		193

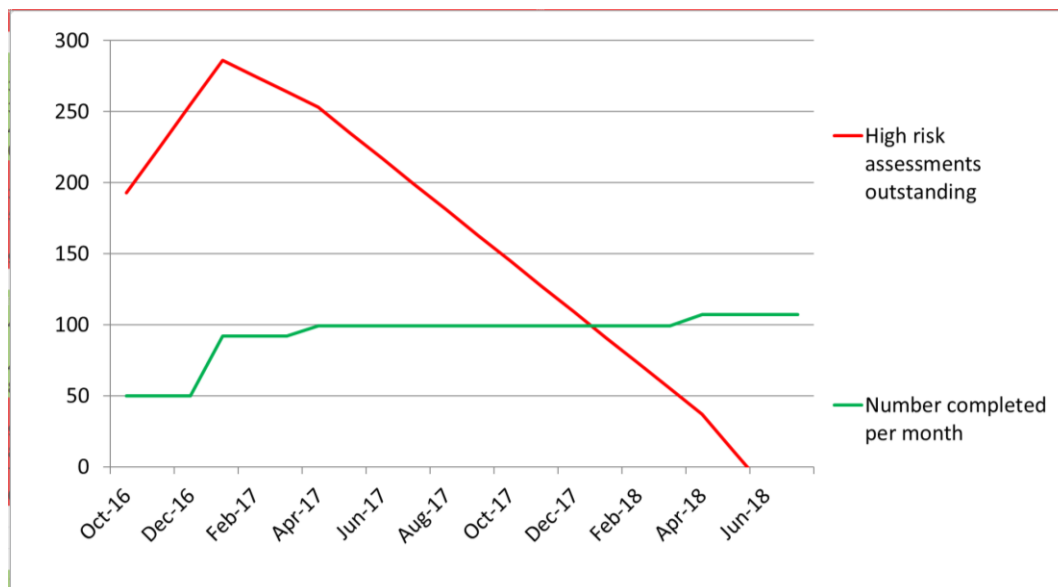
Assessments completed

21. 268 assessments have been completed in 2016/2017 at an average of 44 assessments per month however demand based on high priority assessments has continued to increase and on average is approximately 81 per month this leaves a short fall of 37 assessments per month. The backlog of high priority applications has subsequently increased to 193.

22. Plan:

- a. Recruitment of substantive Best Interests Assessor (BIA) roles (3 posts) – on going
- b. Increase performance of BIA rota from current 20 assessments to 27 a month from April 2017, 35 a month from April 2017 and 44 a month from April 2018 in partnership with SSOTP, both Mental Health Trusts and Independent Futures
- c. Increase the numbers and capacity of independent BIA contractors

23. The plan will increase capacity to complete assessments over a period of time and it is anticipated that current monthly demand of 81 high priority assessments should be reached by the end of January 2017 at which point the high priority backlog will have increased to an estimated 300 assessments. By continuing to use the BIA rota, employing substantive BIA's and using independent BIA contractors the backlog of high priority applications will be eliminated by June/July 2018 (anticipating the current rate of applications).



24. Budget Projections

Budget	Budget	Planned Spend	Overspend
2016/2017	£128,000	£130,700	£2,700
2017/2018	£128,000	£154,800	£31,996
2018/2019	£128,000	£130,800	£2,800

S21A appeals

25. Anyone deprived of their liberty has a statutory right to appeal against the deprivation of Liberty. Staffordshire currently has 18 ongoing and expected cases and a further 9 completed appeals.

Deprivation of Liberty (outside of care home/hospital)

26. DoLS applies to care home and hospitals only. To authorise a Deprivation of Liberty in other accommodation settings an application is required to the Court of Protection Staffordshire have made 5 applications to the court.

Future changes to the law

27. The Law Commission are publishing a white paper in December 2016 which will put forward proposals to change the legal framework for Deprivation of Liberty. It is anticipated that any change would not be introduced for at least 2/3 years.

Link to Strategic Plan

28. The Deprivation of Liberty Safeguards supports the County Councils vision for a connected Staffordshire by ensuring that appropriate prevention and assessment mechanisms are in place to support people's health, wellbeing and independence.

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Appendices/Background papers

Appendix A - Prioritisation Tool