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| Local Members Interest |
| N/A |

Safeguarding Overview & Scrutiny Committee - Monday 10 January 2022

Deprivation of Liberty Safeguards

Recommendations

I recommend that the committee

- a. Note the updated position regarding the waiting list for Deprivation of Liberty Safeguards applications in Staffordshire
- b. Note that the Council continues to triage cases to ensure the highest risk cases are prioritised.
- c. Note that the statutory guidance regarding Liberty Protection Safeguards has not yet been released and that this will require significant transformation work in the future

Report of Cllr Julia Jessel, Cabinet Member for Health and Care

Summary

What is the Overview and Scrutiny Committee being asked to do and why?

1. Safeguarding Overview & Scrutiny Committee is being asked to consider and note the progress relating to the Deprivation of Liberty Safeguards.

Report

Background

2. The Council has a statutory duty to complete Deprivation of Liberty Safeguards (DoLS).
3. 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, the Mental Capacity Act or Court of Protection powers.

4. DoLS apply to people:

- a. aged 18 and over
- b. who suffer from a mental disorder or disability of the mind – such as dementia or a profound learning disability
- c. Are in hospitals or care homes whether placed under public or private arrangements
- d. who lack the capacity to give informed consent to the arrangements made for their care and / or treatment
- e. for whom deprivation of liberty is considered, after an independent assessment, to be necessary and in their best interests to protect them from harm.

5. DoLS were designed to protect the interests of an extremely vulnerable group of people 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

6. 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.

7. On the 19th March 2014 the Supreme Court judgement in P v Cheshire West and Chester Council and P&Q v Surrey County Council provided a clear definition of what constituted a deprivation of liberty. The court, concluded that where “The person is under continuous supervision and control and is not free to leave, and the person lacks capacity to consent to these arrangements”, and the state is responsible or ought to be aware of the deprivation, this will amount to a deprivation of liberty.

8. This decision resulted in a seventeen-fold increase in DoLS requests to all Local Authorities in England.

9. On 8th March 2019 the Local Government and Social Care Ombudsman published its investigation report finding that the Council had unlawfully decided not to carry out assessments of low and medium priority DoLS applications and significantly delayed assessing the remaining applications.

10. At the Cabinet Meeting on 15th May 2019, Cabinet agreed a number of recommendations, an update on these actions is below:
- The Liberty Protection Safeguards were introduced in the Mental Capacity (Amendment) Act 2019 and will replace the Deprivation of Liberty Safeguards (DoLS) system. The associated codes of practice have not yet been published, and the timescales for implementation has now been extended to 2022. Once published we will ensure Staffordshire's guidance is updated accordingly.
 - We have completed actions to implement the legislation in compliance with the recommendations of the Local Government and Social Care Ombudsman.
 - We have amended the approach to Deprivation of Liberty Safeguards to complete full assessments on medium and low priority cases if resources allow.
 - We have completed guidance to extend the Deprivation of Liberty Safeguards triaging process to community deprivation of liberty and we continue to prioritise assessments that are high priority individuals.

Update on Staffordshire Position

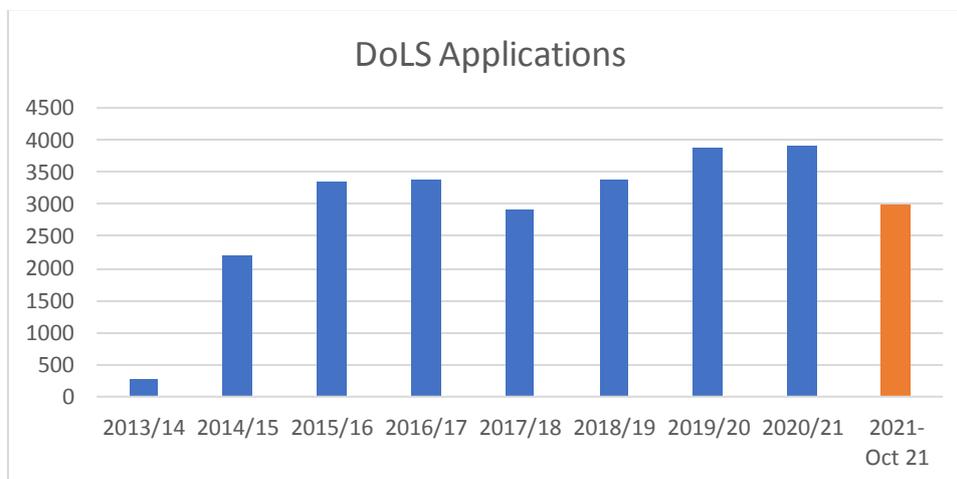
11. All applications for DoLS are initially assessed within 1 working day by a social care and health registered professional and triaged into three categories: high, medium and low (low hospital). Our triage approach ensures that individuals at the highest risk are prioritised for an assessment.
12. In March 2019 our waiting list for DoLS applications was 3,571. This has now decreased significantly to 1867:

| | March 2019 | October 2021 |
|-----------------|--------------|--------------|
| High Priority | 88 | 111 |
| Hospital | Not recorded | 131 |
| Medium Priority | 656 | 144 |
| Low Priority | 2827 | 1078 |
| Total | 3571 | 1867 |

13. Many councils are continuing to operate a waiting list. The most recent data on the waiting list position for all councils within Staffordshire's comparator group is shown below:

| Council | Waiting List at March 2021 |
|------------------|-----------------------------------|
| Norfolk | 1130 |
| Lancashire | 1165 |
| Worcestershire | 1300 |
| Leicestershire | 1335 |
| Cumbria | 1355 |
| Gloucestershire | 1765 |
| Lincolnshire | 1795 |
| West Sussex | 1995 |
| Warwickshire | 2000 |
| Staffordshire | 2075 |
| Somerset | 2205 |
| Nottinghamshire | 2445 |
| Derbyshire | 2485 |
| Suffolk | 2635 |
| Northamptonshire | 3370 |
| Essex | 3565 |

14. It should also be noted that the reduction in the waiting list is within the context of an increase in DoLS applications:



15. The reduction in the waiting list has been primarily achieved through a one-off investment of an underspend of £530,000 during 2021/22 to enable the procurement of additional resource capacity to complete applications.
16. We are aiming to reduce the waiting list to 1,000 by March 2022. To enable the Council to maintain, or reduce, the waiting list at this level beyond March 2022 it would therefore be necessary to continue to invest additional resource in the service.

17. The outcome of the vast majority of assessments that are completed is that the deprivation of liberty is granted and therefore people are being safeguarded as they are deprived of their liberty in their best interests. From January 2020 to October 2021, we have granted 1093 DoLS and recorded 37 as 'not granted' (e.g., the person was identifying as having the capacity to make decisions regarding their care and care home).
18. In the same period, we also had 1725 assessments that were not completed and hence recorded as "not granted" due to the person changing address, the referral being withdrawn, or the person being deceased.
19. We have found a very small number of incidents of someone being deprived of their liberty where it is not in their best interests which has required a referral to safeguarding.

Section 21A appeals

20. Anyone deprived of their liberty has a statutory right to appeal against the deprivation of Liberty, this is called a Section 21A appeal. This appeal takes place when the person is objecting to the arrangements for his/her care, either verbally or by behaviour, or both, in a way that indicates that their representative ought to apply to the Court of Protection for the matter to be given judicial consideration.
21. Staffordshire currently has 19 ongoing cases before the Court of Protection. The number of new cases has fallen significantly over the past 2 years due to the Covid-19 pandemic. The majority of cases at Staffordshire relate to older adults in residential care and it is considered that due to the impact of the pandemic on care homes and need for those transferring to new care homes to isolate, this has dissuaded solicitors and representatives, in all but the most extreme case, from encouraging residents to challenge their deprivation.

Deprivation of Liberty in the Community

22. The Deprivation of Liberty Safeguards apply to care home and hospitals. However, the changes brought about by the Cheshire West case meant that the scope of the situations that amount to a deprivation of liberty was widened. To authorise a Deprivation of Liberty in other accommodation settings such as supported living, shared lives placements, or a person's own home, an application is required to the Court of Protection.
23. An extensive documented application is carried out by a social worker, setting out all the circumstances of the deprivation of liberty. Legal Services will then make an application to seek a Judge's approval.

24. Currently these applications have to be renewed annually as the court cannot authorise a deprivation for longer than 12 months.
25. There are currently 47 ongoing cases, made up of 39 renewal applications and 8 new applications. The number of applications has increased significantly over past two years following the Local Government Ombudsman's review.

Liberty Protection Safeguards LPS

26. The Mental Capacity (Amendment) Act 2019 received Royal Assent on 16 May 2019 and will introduce new measures to authorise deprivation of liberty, replacing the DoLS regime with what will now be called the Liberty Protection Safeguards (LPS). LPS will:
- a. widen the scope of the safeguards to include all people aged 16 and over;
 - b. include all settings, including a person's own home;
 - c. make Clinical Commissioning Groups and Hospital Managers responsible for safeguards in NHS hospitals (rather than the local authority).
 - d. change the assessment processes and defined roles which complete this
27. The Act is due to come into force on 1 April 2022; however the associated statutory guidance and regulations which should have been issued in spring 2021 have not yet been published meaning there is significant doubt as to the date of implementation.
28. On publication of the guidance the Council will be required to complete a significant transformation to update its systems, practice guidance, and workforce development to be able to meet the new standards.

Link to Strategic Plan

29. 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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