



Social Care Services Board  
9 July 2015

## Deprivation of Liberty Safeguards ( DOLS)

**Purpose of the report:** Scrutiny of Services and Budgets

To highlight the implications and challenges for Adult Social Care following the Supreme Court Judgement involving Surrey County Council *Council [P v Cheshire West and P and Q v Surrey County Council] : March 2014*

### Introduction:

1. The Deprivation of Liberty Safeguards are a provision of the Mental Capacity Act implemented in April 2009. Their purpose is to prevent the arbitrary detention (deprivation of liberty) of adults in care homes or hospitals for the purpose of receiving care or treatment.
2. When a person who lacks mental capacity to consent to their admission to a care home or hospital it is sometimes necessary to restrict or restrain them in some way to ensure that they receive the necessary care or treatment e.g. locking exit doors, use of medication, close supervision, physical restraint etc. This can be lawful under the Mental Capacity Act as long as the restrictions do not constitute a deprivation of the person's liberty.
3. Where a care home or a hospital (Managing Authority, MA ) believes that it is necessary for a person to be deprived of their liberty in order to give them care or treatment they must apply to their local authority (The 'Supervisory Body' - SB ) to authorise this. The process for assessing, recommending and authorising such arrangements and putting appropriate protections in place are regulated by the 'Deprivation of Liberty Safeguards' (DOLS) provisions of the Mental Capacity Act.
4. Surrey County Council (SCC) is the 'Supervisory Body' for all DOLS requests made by care homes and hospitals in Surrey, and as such must

commission all assessments required in order to authorise a Deprivation of Liberty and must authorise this once they are completed.

5. Authorisations can be put in place for a maximum of one year, and need to be reviewed and renewed if they are required for a longer period.
6. The assessment process involves six separate assessments:
  - Age assessment
  - Mental Health Assessment
  - Mental Capacity Assessment
  - Eligibility Assessment
  - No Refusals Assessment
  - Best Interests Assessment.
7. These assessments must be completed by at least two different professionals, including an approved doctor and a 'Best Interests Assessor (BIA)'.

#### **Impact of the Supreme Court Ruling:**

8. SCC was party to the Supreme Court case. This was not because of any criticism of SCC regarding their professional actions or their care and support for 'P&Q' – two sisters in their early twenty's who have a learning disability. The case was brought by the Official Solicitor as an appeal against an earlier High Court judgment which determined that they were **not** deprived of their liberty. The case was about a matter of law rather than professional practice and the judgement specifically made positive reference to the role and actions of SCC in supporting both of these young women.
9. The Supreme Court Ruling has effectively lowered the threshold set for what constitutes a deprivation of liberty in previous court rulings. It establishes that if a person a) without capacity to consent to their care and treatment and b) is not free to leave and c) is under continuous supervision and control, then their accommodation arrangements (in Hospital or Care Home) must be assessed under the DOLS provisions to lawfully authorise their detention.
10. If such circumstances arise in Supported Living or Shared Lives placements, then authorisation currently needs to be sought from the Court Of Protection.
11. Annex 1 provides an extract from the Law Society guidance 'Identifying a deprivation of liberty : a practical guide'. The extract provides some examples of what may, and may not, constitute a deprivation of liberty in a care home setting.
12. The Law Commission are completing a review and consultation regarding DOLS and the underpinning legislation. They are starting work

on the project in summer 2014 and expect to publish their report, with recommendations for reform and a draft Bill, before the end of 2016.

13. SCC Requests for DOLS authorisations:

<b>Year</b>	<b>No. of requestes</b>
2011-2012	57
2012-2013	60
2013-2014	113
<b>Supreme Court Judgment handed down 19 March 2014</b>	
2014 -2015	3,045

14. This represents an unprecedented demand for authorisations and is a pattern repeated in nearly every local authority in England.

**The Current Operational Situation in Surrey**

15. The frontline DOLS team, based at Quadrant Court, Woking currently has 3 Senior Practitioners (2.5 Full time equivalents – all trained ‘Best Interest Assessors’) a team manager, and two administration assistants who work on completing DOLS assessments and running a duty system to triage all requests, manage the DOLS process and give guidance and advice to managing authorities.

16. In light of the current level of demand there is inevitably a backlog of assessments and our focus is on prioritising urgent requests that require a fast response with a parallel programme of addressing outstanding requests in place.

17. In the locality and hospital teams there is a pool of trained Best Interests Assessors (BIA). Additional BIA training has been commissioned which has increased the numbers of assessors from 20 to 34 in the last year. It is anticipated that up to 20 further BIAs will be trained in this financial year.

18. There is a rolling advertisement ( for internal and external applicants) for permanent frontline BIAs to join the DOLS team.

19. Two new BIAs joined the frontline team at the beginning of July 2015 and recruitment to a further administration post has also commenced.

20. Independent BIAs are currently being used to complete DOLS assessments for residents in our older people’s in house homes (as DOLS provisions prohibit us providing our own BIAs to complete assessments in homes where we are the ‘Managing Authority’). This work is being completed in conjunction with the older people’s home closure programme.

**Funding position:**

21. The service has reserved an additional budget of £1.075m for 2015/16.
22. Additional Department of Health funding of £25m nationally, has been provided to local authorities to support their response to the Supreme Court judgement.
23. SCC's allocation from the national 'pot' is £426,000.

#### **Further actions to respond to increased demand**

24. The rolling recruitment advertisement for permanent BIAs will be maintained.
25. Additional BIA training will be provided to SCC staff to increase the number of assessors.
26. There will be a request for expressions of interest from Social Work agencies who are interested in providing BIAs to complete assessments. The aim is to utilise these assessors for out of county placement throughout the UK.
27. The pool of Independent BIAs will be increased to complete outstanding assessments. This will be done on a piece work basis, as is the case for our in house services.

#### **Conclusions:**

28. Even with the proposed increase in staffing it will be very challenging to meet the level of demand, and activity to recruit independent BIA remains an ongoing imperative.
29. The service will continue to consult and work with with the Department of Health and Law Commission to influence future policy, procedures and legislation.
30. It is recognised that utilising a private social work agency, one of the mechanisms to meet demand, has cost and quality implications. These will be carefully considered to ensure best value and high quality assessments for some of Surrey's most vulnerable residents.

#### **Recommendations:**

31. It is recommended that the Board:
  - a) Notes the challenging increase in DOLS authorisation requests
  - b) Supports the approach taken to manage the increase
  - c) Receives an update report in twelve months.

<b>Next steps:</b>
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32. Next steps include:

- On-going monitoring of DOLS requests and authorisations.
- Contribute to the Law Commission's review and consultation.
- Continue actions to increase the level of resource required to respond to the increased demand.

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**Sources/background papers:**

- [P v Cheshire West and P and Q v Surrey County Council\] : March 2014](#)
- [Law Commission review: Mental Capacity and Detention](#)
- Annex 1 - Extract from the Law Society guidance on the law relating to the deprivation of liberty safeguards, published 9 April 2015: ['Identifying a deprivation of liberty: a practical guide The care home setting' \(Chapter 6\).](#)

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