



Audit & Governance Committee
12 April 2018

Update on Deprivation of Liberty Safeguards

Purpose of the report:

This report provides Members of the Audit and Governance Committee with an update on assessments and authorisations in relation to Deprivation of Liberty Safeguards (DOLS).

Recommendations

1. The Audit and Governance Committee is asked to note the contents of the report.

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 it 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 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 DOL 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)'.
8. An Internal Audit review of DOLS, completed in November 2017, reported approximately 6,000 DOLS applications were awaiting assessment and/or authorisation. This figure had increased year on year and included almost 400 assessments completed over a year ago and therefore unable to be authorised. The review also found an insufficient number of council employed, pool BIAs available to meet the demand for assessments

Impact of the Supreme Court Ruling:

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 to be assessed under the DOLS provisions to lawfully authorise their detention.
10. If such circumstances arise in Supported Living, Shared Lives placements or even in peoples own homes then authorisation currently needs to be sought from the Court Of Protection (with support from our legal department) to produce the necessary forms required for a judicial authorisation.

Draft Legislation

11. The Law Commission consulted widely in 2016 regarding how the DOLS should be amended or replaced. They submitted their draft bill to the Department of Health in March 2017 and in October 2017 the DOH published their initial response (See Appendix 1). We do not expect any change to legislation to be implemented within this parliament, due to other Political priorities in Central Government.
12. Surrey County Council Requests for DOLS authorisations:

Year	No. of requests
2013-2014	113
Supreme Court Judgment handed down 19 March 2014	
2014 -2015	3,045
2015-2016	3,879
2016-2017	3,533
2017-2018	3,363 (07.03.2018)

Updated figures

Assessments and authorisations

13. A comparison of the number of assessments and authorisations awaiting completion is shown in Table 1 below.

	August 2017	March 2018
Applications awaiting assessment	5,000 approx.	5,297
Applications awaiting authorisation	862	10 (07.03.2018)
Applications over a year old (therefore unable to be used/authorised)	394	0
Authorisations in place	387	743

14. The figures show a significant improvement in the number of completed authorisations in the last six months. This is as a result of management action following the last audit with the positive effect that the backlog of outstanding authorisations has now been effectively addressed. This has primarily been achieved by training more authorisers (we now have approximately 40 Senior Managers in Adult Social Care) with the management support of the Adult Leadership team.
15. We are now in position where we are able to keep up with authorising all assessments completed so will not find ourselves in the position we were in last year.
16. The frontline DOLS team now have two Senior BIA Practice leads and five BIAs, four administrative support staff, an Assistant Team Manager and myself. We have 45 Pool BIAs who are on a Rota and are expected to complete two assessments every six weeks. We have a pool of trusted, experienced independent BIAs who we spot purchase with. As a service we are confident that we are able to allocate and authorise the assessments that we consider require urgent allocation, but we remain unable to complete all the referrals made, and this will not change.
17. We screen all referrals on a daily basis, and triage them in line with ADASS (Association of Directors of Adult Social Services) guidelines. We went live with LAS (Adult Social Care Record System / DOLS Module) in September last year, which has provided an excellent platform with which to record and authorise DOLS assessments, and we hope to be able to further utilise this to allow independent BIAs and Drs to access it, saving further time and administration.
18. With regard to influencing government on the replacement for DOLS.
19. On 15 February 2018 Sharon Egan, Mental Capacity Deprivation of Liberty Safeguards Lead, Social Care Oversight, Care and Transformation Directorate, Department of Health and Social Care (DoHSC) and two DoHSC colleagues visited our service for the day at our invitation.
20. We provided our views and concerns regarding the proposed replacement for DOLS (Liberty Protection Safeguards), which was an excellent opportunity.
21. Debbie Chantler from our Legal Department and Shelley Cummins, a colleague from the NHS joined us.

22. Sharon has advised us that they found the day informative and useful and that our discussions had provided them with some very helpful insights into the proposals from a Local Authority perspective.
23. Andy Butler, SCC Principal Social Worker for Adults works with the DoHSC, ADASS, NHS England and Local Government Authority (LGA) on a number of regional and national groups influencing current and future practice and policy regarding The Mental Capacity Act and other associated legislation. He is also a member of The National Mental Capacity Forum, Leadership Group, chaired by Baroness Finlay.
24. With regard to the future, it is not possible to predict the exact number of DOLS requests that we will receive over the coming years, but we do consider that the number of possible referrals from care homes and hospitals will remain fairly constant, so our best predictor are the statistics provided in Paragraph 12.
25. There is a continuous turnover of people lacking capacity in hospital beds and in care homes, due to people moving on or dying.
26. Currently we are actively working on increasing the number of assessments our frontline and Pool BIAs are completing by encouraging proportionate assessments, and reviewing future targets.

Conclusions

Financial and value for money implications:

27. The Adult Leadership Team is regularly monitoring and reviewing our DOLS activity with a view to ensuring a proportionate service response to demand focussed on ensuring that our most vulnerable residents are protected whilst having due regard for our fiscal restrictions and responsibilities.

Risk management implications:

28. DOLS has been on the Risk Register since the Supreme Court Ruling in 2014
DOLS is reviewed at the Statutory Regulatory Network

Next steps

1. Audit in 2018/2019
2. Ongoing review at Adult Social Care (ASC) Adult Leadership Team Meetings to consider future targets and monitor this.
3. We would welcome any suggestions the Board has to make.

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Sources:

[Mental Capacity and Deprivation of Liberty | Law Commission](#)