

# Health and Adult Social Care Overview and Scrutiny Committee

BRIEFING NOTE – No. 4/23

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Briefing paper to: All Members of the Health and Adult Social Care Overview and Scrutiny Committee

Purpose: Deprivation of Liberty Safeguards (DoLS) briefing

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## **1. Deprivation of Liberty Safeguards**

- 1.1 The Deprivation of Liberty Safeguards (DoLS) is the procedure prescribed in law when it is necessary to deprive the liberty of a resident or patient who lacks capacity to consent to their care and treatment in order to keep them safe from harm.
- 1.2 DoLS can only apply to people who are in a care home or hospital, these are referred to as the managing authority. This includes where there are plans to move a person to a care home or hospital where they may be deprived of their liberty. They can do this up to 28 days in advance of when they plan to deprive the person of their liberty.
- 1.3 For care homes and hospitals, the supervisory body is the local authority where the person is ordinarily resident. Usually this will be the local authority where the care home is located unless the person is funded by a different local authority.
- 1.4 There are two types of authorisations under the DoLS Framework, urgent and standard authorisations. Urgent authorisations are granted by the managing authority itself for up to seven days and can only be extended for up to a further seven days if the supervisory body agrees. When using an urgent authorisation, the managing authority must also make a request for a standard authorisation.
- 1.5 Standard authorisations cannot be extended. If it is felt that a person still needs to be deprived of their liberty at the end of an authorisation, they must request another standard authorisation (or renewal). The supervisory

body must decide within 21 days whether the person can be deprived of their liberty.

## **2. Safeguards**

- 2.1 The Deprivation of Liberty Safeguards provides a legal framework to ensure a person in a care home or hospital, who lacks capacity to consent to their care or treatment, is able to be kept safe from harm.
- 2.2 The first safeguard is the assessment process for a standard authorisation which involves at least two independent assessors who must have received training for their role. There will always be one mental health assessor (usually a doctor) and one best interest assessor (BIA) who will stop deprivation of liberty being authorised if they do not think all the conditions are met.
- 2.3 Family, friends, and paid carers who know the person well should be consulted as part of the assessment process. Those people who don't have family or friends who can represent them have a right to the support of an Independent Mental Capacity Advocate (IMCA) during the assessment process. The fifth principle of the Mental Capacity Act, that any decision made in a person's best interests must be the least restrictive of their rights and freedoms, should be at the forefront of everyone's minds.

## **3. DoLS Team**

- 3.1 The Adult Social Care DoLS team consists of 0.5fte Team Manager and 1.6fte Senior Social Workers (BIAs) and Admin support. There is also one other practising BIA within the Locality based Social Work Teams who undertakes one assessment per month. We commission 8 External BIAs and on average 13 assessments are allocated a week to these BIAs.

### **3.2 2022/2023 Data**

- 3.2.1 Between 1<sup>st</sup> April 2022 and 31<sup>st</sup> March 2023:

- **1456** applications were received, alongside **210** applications awaiting processing, this averages 32 referrals per week.
- **1029** DoLS Authorisations were granted and **960** were not granted for a variety of reasons.
- **451** applications from 2021/2022 were carried forward into 2022/2023.
- **695** applications for standard authorisations were allocated for assessment.

### **3.3 2023/2024 Data**

3.3.1 Between 1<sup>st</sup> April 2023 and 2<sup>nd</sup> June 2023:

- **320** applications have been received. An average of **35** applications received each week.
- **106** assessments have been allocated to our inhouse and external BIAs, most of these allocations are deemed urgent assessments, either due to the person objecting to their care and/or treatment or that they are unbefriended / require a paid representative being appointed.
- **15** assessments have been allocated under the action plan, utilising the agency to address the back log of DoLS Cases. This will increase to 30 when we have been able to recruit to the administration post.

### **3.4 Performance**

3.5 The DoLS process is extremely admin heavy and currently there are several delays at each stage of the process. As of Friday 2<sup>nd</sup> June 2023, there were:

- **280** applications to be processed. **141** applications for standard authorisations are in the back log currently. Therefore, the total number of applications awaiting processing and/or assessment was **421**
- **32** cases are allocated and are in the process of being assessed by a BIA and Doctor.

3.6 Now that the transition from DoLS to Liberty Protection Safeguards has been paused by central government, we are progressing work to minimise the manual administration process and move to a more digital approach.

3.7 An action plan was implemented in April 2023 to address the backlog of assessments and an additional resource via an agency was commissioned. This will enable us to allocate more assessments with the objective of reducing the backlog.

## **4. Community DoLS**

4.1 DoLS can only be used if a person is in hospital or a care home. If a person is living in another setting, including supported living or in their own home, it is still possible to deprive the person of their liberty in their best interests via an application to the Court of Protection. These types of Deprivations are referred to as Community DoLS.

- 4.2 A Community Deprivation of Liberty Safeguards (DoLS) must be applied for where any person living within the community lacks capacity to make decisions for themselves about their support and accommodation.
- 4.3 Consideration should be given for any individual who receives a new service and at each review to ensure that circumstances are the same.
- 4.4 Community DoLS applications require the skills and knowledge of experienced social workers and are extremely time consuming. This work is undertaken alongside the social worker's complex caseload, which can lead to drift due to competing priorities.
- 4.5 The average time spent is between 3.5 and 5 days total. This is dependent on the complexity of the individual situation, and factors such as objections, requirement for an IMCA, directions of the court etc. The process, however, is not a linear one and the work usually takes place over an 8 -10-week span, due to requiring agreement, signatures from family, GP and legal input and often having to chase people for their responses.
- 4.6 Medway's legal team are required to have significant input into Community DoLS cases with the number of hours varying from 55 hours to 250 hours depending on the complexity of individual applications. During the financial year 2022/23, 6 applications were successfully completed.
- 4.7 Community DoLS – Adult Social Care (ASC) update May 2023**
- 4.8 The lack of ability to recruit to social work vacancies and the volume of this and other complex social work required within the locality teams means that ASC are unable to respond in a timely manner.
- 4.9 There are currently 22 people who require a community DoLS application to be made.
- 4.10 The numbers are not static as allocation occurs when workload capacity permits and new people are added to the list when potential deprivations are identified. Six applications have been allocated to social workers and are in progress.

## **5. Risk and Issues**

- 5.1 Medway currently has a significant backlog of unauthorised Deprivations of Liberty. The historic and ongoing back log poses a significant risk to Medway ASC.
- 5.2 Ensuring that Deprivations of Liberty are authorised in the Best Interests of the relevant person is a statutory responsibility of the Local Authority.

Staffordshire council was criticised and fined by the Local Government and Social Care Ombudsman (LGO) for not having a plan for low priority DoLS cases. The LGO's position was *"Resource constraints can never be a legitimate reason for not carrying out the assessments required by law or statutory guidance."*

- 5.3 The action plan, referred to in paragraph 3.9 has been implemented to reduce the backlog and, therefore, the associated risk.
- 5.4 There is also significant risk in respect of Community DoLS. Where applications cannot be made in a timely manner, the LA is not fulfilling its statutory responsibilities and these clients are currently being deprived of their liberty illegally.
- 5.5 Adult Social Care are undertaking a review of the resource needed in the division to reduce the risks with the aim of reducing waiting lists and backlogs of work. This will, however, have financial implications and will need to be considered carefully because of the council's current financial position.

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