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**HEALTH AND SOCIAL CARE SELECT COMMITTEE**

**REPORT OF THE DIRECTOR OF ADULT COMMUNITY AND HOUSING SERVICES**

**DEPRIVATION OF LIBERTY SAFEGUARDS (DoLS)**

**PURPOSE OF REPORT**

1. To brief Health and Social Care Select Committee on the Deprivation of Liberty Safeguards (DoLS), which will come into effect from 1<sup>ST</sup> April 2009 as part of the Mental Capacity Act (MCA) 2005 as amended by the Mental Health Act 2007.

**BACKGROUND**

2. DoLS provide protection for people living in a care home or in hospital who are deprived of their liberty for the purpose of providing treatment or care; these could include people with dementia, acquired brain injury or a severe learning disability. This legislation does not apply to people living in their own homes or supported living accommodation.
3. The Safeguards address the October 2004 European Convention on Human Rights (ECHR) judgment in HL v the United Kingdom (the Bournemouth judgment), which requires that people may only be deprived of their liberty through a process set out in law, with safeguards to prevent arbitrary detention and speedy access to a Court to review the detention.
4. Depriving someone who lacks the capacity to consent to the arrangements made for their care or treatment of their liberty is a serious matter, and the decision to do so should not be taken lightly.
5. The Deprivation of Liberty Safeguards make clear that a person may only be deprived of their liberty if:
  - it is in their own best interests to protect them from harm
  - it is a proportionate response to the likelihood and seriousness of the harm, and
  - there is no less restrictive alternative.

6. The Code of Practice states that authorisation should only be made for the shortest period necessary, up to a maximum period of one year.

### **Definition of Deprivation of Liberty**

7. The Courts have made it clear that the question of whether someone has been deprived of liberty depends on the particular circumstances of the case. No simple definition can be produced that would apply in every case.
8. When assessing whether a person is, or may be, deprived of their liberty, it is necessary to consider the combined impact of all restrictions placed upon them.
9. Deprivation of liberty is likely to occur when:
  - Health/social care professionals exercise complete and effective control over the person's care, residence, treatment, contacts and movements - what they can do; who they can associate with, or when and what they can eat.
  - The person is under continuous supervision and control.
  - The person is not allowed any freedom of movement within the care home or hospital
  - The person's behaviour and movement are controlled through regular use of medication or seating from which a person cannot get up
  - A decision has been taken that the person would be prevented from leaving if they made a meaningful attempt to do so.
  - The person is unable to maintain social contacts outside the care home or hospital because of restrictions placed on access to other people.
  - Family, friends or carers, who might reasonably expect to take decision under the Mental Capacity Act 2005 in relation to the person, are prevented from discharging them, moving them to another care setting visiting them, or from taking them out at all.

### **Action in Dudley**

10. Dudley MBC and Dudley PCT have jointly funded a project manager for DoLS/MCA implementation for one year from November 2008 – November 2009.

11. From 1st April 2009, hospitals and care homes (managing authorities) providing care must apply to their supervisory body (PCT for hospitals and LA for care homes) for authorisation if they need to deprive someone of their liberty in order to provide the care they need and it is in their best interests.
12. The supervisory body must then arrange for six assessments to be undertaken in order to establish whether or not the conditions for Deprivation of Liberty Safeguards are met and it is appropriate to issue a standard deprivation of liberty authorisation. The supervisory body must appoint a best interests and mental health assessor to complete these 6 assessments. There is a prescribed process and standard forms for these assessments provided by the Department of Health. The administrative process is extremely complex.
13. Dudley PCT and MBC have agreed a joint referral point for receiving and managing requests for authorisations. Dudley and Walsall Mental Health Trust (D&WMHT) has been asked to administer the process within the Mental Health Act administration team at Bushey Fields Hospital on behalf of the PCT and LA. Many of the prescribed procedures for DoLS have much in common with those of the Mental Health Act.
14. There are two types of authorisation – standard and urgent. A hospital or care home must apply for a standard authorisation in advance of any deprivation. In these cases, assessments will need to be completed and a decision made within 21 calendar days. A managing authority can also give itself an urgent authorisation if it is already depriving someone of their liberty, provided it simultaneously applies for a standard authorisation. In these circumstances, the assessments must be completed within 7 days.
15. For the first month of implementation, the Department of Health has agreed that the deadlines for completion of assessments can be extended for up to 21 days for urgent authorisations and 42 days for standard authorisations.
16. At the time of writing this report, 30 people for whom Dudley MBC have supervisory body responsibility, have been identified as needing a DoLS assessment in April. The number of requests could, however, be substantially more or less than this figure. (The Department of Health estimates that 25% of assessments will result in authorizations) that will require a review.)
17. Dudley MBC is training ten best interests assessors. Dudley PCT is training two best interests assessors. All Section 12 doctors at Bushey Fields (psychiatrists eligible to admit people to hospital under a section of the Mental Health Act) have been asked to train as Mental Health assessors for DoLS. The number and availability of doctors is still awaiting confirmation.

18. There are considerable resource implications on best interests assessors and their teams regarding the time needed to complete assessments. The Department of Health has estimated that each best interests assessment will take an average of 8 hours. Some estimates suggest they may take up to 20 hours, however, and if travelling even within the West Midlands is added, the figure could be even higher.
19. An Independent Mental Capacity Advocate (IMCA) will be required to support some people through the assessment process. If an authorisation is given, a proportion will need a paid representative under the Act. There is a duty for supervisory bodies to commission such support.
20. Dudley MBC and PCT are commissioning an additional half-time post equivalent IMCA service from Dudley Advocacy to accommodate these two additional roles.

## **FINANCE**

21. The Council received a grant of £155,000 in 2008-09 from Department of Health for implementation of the Mental Capacity Act, including the Deprivation of Liberty Safeguards. The grant will fund the project manager's post; training of best interests assessors and the administration of the authorisation process.

## **LAW**

22. The relevant legislation is the Mental Capacity Act 2005; and the Mental Health Acts 1983 and 2007.

## **EQUALITY IMPACT**

23. The Mental Capacity Act and the Deprivation of Liberty Safeguards provide protection for people living in a care home or in hospital who lack capacity and are deprived of their liberty for the purpose of providing treatment or care

## **RECOMMENDATION**

24. Select Committee is asked to note and comment on this report



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