
TITLE OF REPORT: **Mental Capacity Act (MCA) & Deprivation of Liberty Safeguards (DoLS)**

REPORT OF: **Steph Downey – Service Director Adult Social Care**

Summary

This report provides an overview to the committee with regards to the Mental Capacity Act/ Deprivation of Liberty Safeguards. This report will include an overview of legal compliance to date, as well as an update on future direction.

Background

1. Care, Health & Wellbeing Overview and Scrutiny Committee are reminded that Gateshead Council have a statutory duty as a “supervisory body” to facilitate all applications and authorisations for deprivation of liberty if this is deemed to be in the individuals best interest.
2. The Mental Capacity Act provides a statutory framework to be used when assessing and making decisions on behalf of individuals who lack capacity and came into force in October 2007. The act is a wide-ranging piece of legislation that governs the care, treatment and finances of people from the age of 16, who lack capacity to consent or make decisions in these areas.
3. New provisions were added to the Act in April 2009, which are known as the Deprivation of Liberty Safeguards (DoLS), which serve to protect the most vulnerable people in society including those who, for their own safety and in their best interests, need to be accommodated under care and treatment regimes that may be depriving them of their liberty, because they have not the capacity to agree to being accommodated under those restrictive conditions.
4. On 19th March 2014, the Supreme Court handed down a judgment known as ‘Cheshire West’ that significantly altered and simplified the ‘test’ to be applied when determining whether a person should be placed under the authorisation of a DoLS. The full impact of this judgment was significant with many local authorities failing to meet unprecedented demand, leaving individuals without the legal safeguards, and many local authorities at risk of legal challenge through non-compliance.

5. This judgement also highlighted several other areas where deprivations of liberty could occur, this includes an individual's own home and arrangements agreed via other legislative powers including foster care. This further widened the scope of the judgement, and included services not traditionally affected by DoLS such as housing and children's services. Deprivation of liberty in these areas can only be secured by judicial agreements via the Court of Protection.
6. Given the increase to activity in this area, rapid case law and the increasing legislative scrutiny required, governance and assurance is monitored via the Safeguarding Adult's Board (SAB) and sub-groups, which has representation from many Senior Managers and stakeholders to ensure that increased MCA understanding and DoLS remains a high priority and legal compliance remains a strategic objective.

Strategic Themes and Priorities

- 7 Gateshead Council as supervisory body has remained legally compliant with the judgement, ensuring that local citizens continue to receive legal protection as and when required despite the figures as outlined below showing increase to demand, and the resource challenges this has brought.

Year	DoLS authorisations
2013/14	94
2014/15	916
2015/16	1832
2016/17	2118

- 8 Due to the local demand, a series of projects are underway within this area to improve responsiveness and productivity, as well as streamlining what is undoubtedly a bureaucratic monitoring system of the safeguards. These projects include working closely with the transformation team, ICT and finance. Work so far has shown some significant improvements which has also realised some financial savings.
- 9 Nationally; official figures show 15-16 had the highest increase to the number of DoLS applications to date at 195,840, 30% higher than 14-15, and significantly higher than 13,700 in 13-14. The increase, plus the overly technical and bureaucratic processes involved have given weight to the compelling case that DoLS needed to be overhauled. An initial consultation paper by the Law Commission confirmed DoLS was in crisis, and the existing system should be repealed and a new scheme introduced

Consultation

- 10 A Draft Bill has been introduced in March 2017 with the recommendations to replace the existing DoLS scheme. This scheme is known as the “Liberty Protection Safeguards”. The Draft Bill will also amend some of the Mental Capacity Act to continue to provide increased protections within the Human Rights Framework.

The recommended scheme serves the same essential purpose as the existing DoLS; however, the new scheme has removed the features of DoLS which were felt as being inefficient and actively detrimental.

- New scheme would apply to all setting including hospitals, care homes, supported living arrangements and an individual’s own homes.
- The scheme would also include those who are currently excluded, such as 16-17 year olds.
- Proposals would include the overall care regime, including transient care arrangements and transportation.
- Arrangements made would be incumbent on the responsible body such as CCG, NHS & LA
- A detailed list of criteria which must be followed in order for deprivation to be authorised
- Any decisions made which would give rise to a deprivation must be made in advance of care proposals
- Independent scrutiny of the proposed care arrangements
- Rigorous scrutiny should the individual object to arrangements
- Once deprivation is authorised entitlement to ongoing rights of advocacy

Future direction

- 11 The next step will be for the Department of Health to respond to the Law Commission’s recommendations which will happen in the next 12 months. Depending upon the acceptance, rejection or modifications to the proposed draft bill this will be scrutinised by Parliament as part of the usual legislative process. It is widely believed that these changes will take some time to come into effect therefore unlikely to see significant changes within two/four years.

Recommendation

- 12 It is recommended that the Committee is asked to:
- Gives its views on the evidence presented.
 - Identify if there are any specific themes or priorities or issues for future discussion, and
 - Agree to updates on actions and progress in relation to OSC workplan