

REPORT TO: Health Policy & Performance Board
DATE: 3 November 2015
REPORTING OFFICER: Strategic Director, People & Economy
PORTFOLIO: Health and Wellbeing
SUBJECT: Deprivation of Liberty Safeguards (DoLS)
WARD(S) Borough-wide

1.0 PURPOSE OF THE REPORT

1.1 To update the Board and highlight key issues with respect to Deprivation of Liberty Safeguards (DoLS)

2.0 RECOMMENDATION: That the report be noted.

3.0 SUPPORTING INFORMATION

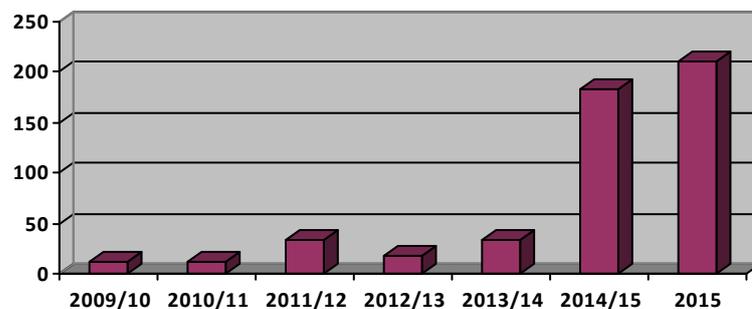
3.1 The Deprivation of Liberty Safeguards (DoLS) are one aspect of the Mental Capacity Act (2005). The Safeguards are to ensure that people in care homes and hospitals are cared for in a way that does not inappropriately restrict their freedom, and if necessary restrictions are only applied in a safe and correct way, and that this is only done when it is in the best interests of the person and there is no other way to provide appropriate care.

3.2 On 19th March 2014 a Supreme Court ruling P v Cheshire West and Chester and P and Q v Surrey Council was significant in the determination of whether arrangements made for the care and/or treatment of an individual lacking capacity to consent to those arrangements amount to a deprivation of liberty and introduced a new 'acid test'. The implication being that all people who do not have capacity and are not free to leave their environment need to be supported under the framework of the DoLS.

3.3 The judgment is important as it holds that a DoL can occur in a domestic setting where the State is responsible for imposing those arrangements. This will include a placement in a supported living accommodation in the community. Hence, where there is, or is likely to be, a deprivation of liberty in such placements that must be authorised by the Court of Protection.

3.4 An action plan was developed to address and co-ordinate the Halton response to the judgement. The Safeguarding Unit co-ordinates and manages the DoLS assessments and reviews and acts on

behalf of the Supervisory Body (The Local Authority). The team has been increased to include a DoLS co-ordinator and two dedicated DoLS assessors. In addition the team is supported by a small pool of Best Interest Assessors (BIA) drawn from care managers and there is an ongoing training programme established to ensure that all appropriate staff are trained to undertake this role going forward.



- 3.5 The Health and Social Care Information Centre (HSCIC) gathers national data regarding DoLS and has identified that nationally there is a tenfold increase on application for DoLS. The local data above identifies the significant increase in the amount of requests for assessments rising by 302% from 2014 to 2015. To date the Supervisory Body has received 211 requests, averaging between 8 to 10 requests per week. If this progresses at the same rate until the end of March 2016 this will represent a further 156% increase on the 2014/15 figures.
- 3.6 As a result of the mounting criticism of DoLS the Government requested the Law Commission undertake a review. The Law Commission has now developed proposals to replace DoLS and is consulting on these proposals in a consultation paper Mental Capacity and Deprivation of Liberty. The Commission will publish its recommendations in 2016 with a view to achieving legislative reform by 2017 – 18.
- 3.7 The Mental Capacity Act Steering Group continues to work with key partners to co-ordinate and address issues locally. Further work is being undertaken to strengthen the response to DoLS and ensure continued capacity and compliance with legislation.
- 4.0 **POLICY IMPLICATIONS**
- 4.1 A review of existing policies and procedures is being undertaken

5.0 **OTHER/FINANCIAL IMPLICATIONS**

5.1 Any litigation due to the breaches will incur financial implications

6.0 **IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

6.1 **Children & Young People in Halton**

Safeguarding Adults Board (SAB) membership includes a Manager from the Children and Enterprise Directorate, as a link to the Local Safeguarding Children Board. Halton Safeguarding Children Board membership includes adult social care representation. Joint protocols exist between Council services for adults and children. The SAB chair and sub-group chairs ensure a strong interface between, for example, Safeguarding Adults, Safeguarding Children, Domestic Abuse, Hate Crime, Community Safety, Personalisation, Mental Capacity & Deprivation of Liberty Safeguards.

6.2 **Employment, Learning & Skills in Halton**

None identified

6.3 **A Healthy Halton**

The safeguarding of adults whose circumstances make them vulnerable to abuse is fundamental to their health and well-being. People are likely to be more vulnerable when they experience ill health.

6.4 **A Safer Halton**

None identified

6.5 **Halton's Urban Renewal**

None identified

7.0 **RISK ANALYSIS**

7.1 Failure to consider and address the breaches could expose individuals to abuse and the Council as the Statutory Body vulnerable to complaint, criticism, and potential litigation.

8.0 **EQUALITY AND DIVERSITY ISSUES**

8.1 It is essential that the Council addresses issues of equality, in particular those regarding age, disability, gender, sexuality, race, culture and religious belief, when considering its safeguarding policies and plans. Policies and procedures relating to Safeguarding Adults are impact assessed with regard to equality.

9.0 **LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF
THE LOCAL GOVERNMENT ACT 1972**

9.1 None under the meaning of the Act.