

Health Policy & Performance Board

Scrutiny Review of Deprivation of Liberty Safeguards (DoLS)

**Report
January 2020**

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I.0 PURPOSE OF THE REPORT

1.1 The purpose of the report, as outlined in the initial topic brief (Appendix One) is to:

- To understand the Deprivation of Liberty Safeguards (DoLS), when and why they are enacted and what protections they offer individuals who lack mental capacity.
- To appreciate the Council's role in authorising DoLS and examine the resource implications of this.
- To consider the risks associated with non-fulfilment of DoLS authorisation duties and the control measures in place to mitigate risk.
- To recognise the performance monitoring processes for maintaining an overview of fulfilment of DoLS and the mechanisms for reporting back to Senior Management Team.
- To ensure the process and procedures for achievement of the Council's duties are effective and efficient.
- To reflect on those at risk of unlawful deprivation and the need to offer protection through interim processes (emergency authorisation).
- To evaluate the Council's work in partnership with care settings across the borough in communicating the legal requirements associated with DoLS.
- To benchmark Halton Borough Council's performance in the authorisation of DoLS in comparison to neighbouring authorities.
- To identify the change management process required to implement impending legislative changes.

2.0 POLICY AND PERFORMANCE BOARD (PPB)

2.1 This review was commissioned by the Health PPB and the topic formally adopted at the June 2019 meeting.

2.2 This report will be presented to Health PPB in February 2020. The report will also be presented to Adult Social Care Senior Management Team, the Executive Board and boards or committees of stakeholders, as appropriate.

3.0 MEMBERSHIP OF THE TOPIC GROUP

3.1 An open invitation to participate in the scrutiny group was made to all members of the Health PPB. The table below details which PPB members and officers participated in the review:

3.2

Name and Title
Councillor Joan Lowe – Scrutiny Chair
Helen Moir – Divisional Manager – Independent Living
Claire Richards – Registered Manager – Halton View Care Home
Councillor Eddie Dourley
Councillor Geoff Zygadlo
Councillor June Roberts
Councillor Margaret Ratcliffe
Councillor Pauline Sinnott
Dean Tierney – Principal Managers – Safeguarding
Dr Syed Javaid – Section 12 Doctor
Gill Valentine – Healthwatch Advocate
Marion Robinson – Group Solicitor – Legal Services
Neil Miller – Finance Officer
Nicola Hallmark – Senior Service Development Officer
Steve Westhead – Practice Manager - Safeguarding
Suzanne Salaman – Practice Manager – Policy, Performance and Customer Care

3.3 The Schedule of Activity (Appendix Two) shows the visiting presenters who contributed to the topic review.

3.4 **The Chair would like to extend thanks to all of those who took the time to participate in this review.**

4.0 METHODOLOGY

4.1 This scrutiny review was conducted through the following means:

- Monthly meetings of the scrutiny review topic group;
- Reports and presentations made by key members of staff as well as services and partners involved in the DoLS process;
- The minutes for each review meeting were circulated to participants to check for accuracy.

5.0 BACKGROUND

5.1 The Mental Capacity Act (2005)

5.1.1 Deprivation of Liberty Safeguards (DoLS) sit as 2009 amendments within [The Mental Capacity Act \(2005\)](#).

5.1.2 The Mental Capacity Act aims protect and empower those people who lack the mental capacity to make their own decisions. The law applies to those 18 years and over and operates under five key principles:

1. A person must be assumed to have capacity unless it is established that they lacks capacity.
2. A person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success.
3. A person is not to be treated as unable to make a decision merely because they make an unwise decision.
4. An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in their best interests.
5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

5.1.3 Those who lack decision making capacity may have dementia, a severe learning disability, acquired brain injury, have suffer a stroke or have other condition which affects their cognition. However, just because a person has a specific health conditions that affects the mind or brain does not automatically mean they lack the capacity to make a specific decision. Decision making capacity is considered under a two-part assessment:

1. Does the individual concerned have an impairment of, or a disturbance in the functioning of, their mind or brain, whether as a result of a condition, illness, or external factors such as alcohol or drug use?
2. Does the impairment or disturbance mean the individual is unable to make a specific decision when they need to? Individuals can lack capacity to make some decisions but have capacity to make others, so it is vital to consider whether the individual lacks capacity to make the specific decision.

A person is unable to make a decision if they cannot:

- a) understand the information relevant to the decision, or
- b) retain that information for long enough to make the decision, or
- c) use or weigh up that information as part of the process of making the decision, or
- d) Communicate that decision.

5.2 Deprivation of Liberty Safeguards (DoLS)

- 5.2.1 Deprivation of Liberty Safeguards (DoLS) provide a legal framework under which adults in certain care settings (including care homes, nursing homes and hospitals) may have their freedom of movement restricted. They were brought into statute as part of the 2009 amendments to the [Mental Capacity Act](#) and the legislation is implemented against a related [Code of Practice](#).
- 5.2.2 DoLS apply to those people (aged 18 and above) who lack mental decision making capacity and who may be placed at harm if they were to be left unsupervised. DoLS represent a legitimate infringement of person's 'Right to Liberty' – Article 5 of the Human Rights Act 1998 – whilst considering a set of checks to ensure that arrangements are appropriate and in the person's best interests.

“The Safeguards ensure that arbitrary decisions are not being made about a person's care and treatment because of their lack of capacity; that they are not subject to unnecessary supervision and control; that the person's wishes and interests are advocated in the most appropriate way; that all other options are explored and the least restrictive option is applied; and that there is a right of appeal against any decisions made.”

Source: *Halton Borough Council Mental Capacity Act – Deprivation of Liberty Safeguards Policy – May 2019*

- 5.2.3 For a DoLS to be lawful a rigorous process with six different assessments must be completed to define whether:

1.	The deprivation in the person's best interests
2.	They fulfil the age criteria for detention under the Mental Capacity Act (age 18 years plus)
3.	There are no prior refusals to the proposed care and treatment (Advanced Decisions/Lasting Power of Attorney)
4.	The person lacks mental capacity
5.	The person is suffering from a mental health disorder as defined by Mental Health Act 2007
6.	They meet eligibility criteria for detention under the Mental Health Act (as opposed to under the Mental Capacity Act)

- 5.2.4 Within this process there are designated statutory responsibilities for which Halton Borough Council fulfil the role of 'Supervisory Body' and have accountability for authorisation of DoLS arrangements.
- 5.2.5 DoLS are non-transferrable and authorisation relates to a singular care setting. This means that a transfer of care (for example, a care home resident under a

DoLS is admitted to hospital) requires a new assessment and authorisation process to be embarked upon.

5.2.6 Following landmark case law in 2014 (P v Cheshire West and Chester Council and another” and “P and Q v Surrey County Council) the definition of what constitutes a deprivation of liberty was widened and clarified with two ‘acid test’ questions being set to define the need for the safeguards:

1. Is the person under continuous supervision and control?
2. Are they free to leave?

5.2.7 This ruling broadened the threshold under which a DoLS authorisation must be made, (included considering DoLS in relation to ‘Supported Living’ settings and the requirements to apply to the Court of Protection for authorisation of these) and resulted in a significant increase in applications for assessments. This has resulted in DoLS being repeatedly cited on the ‘Corporate Risk Register’ as posing concern for the Council. An ongoing backlog of applications and assessments is being managed to ensure that unlawful deprivation does not occur.

5.2.8 The Supervisory Body responsibilities for DoLS arrangements within Halton are managed through the ‘Integrated Adult Safeguarding Unit’. This involves using a screening tool to support prioritisation of cases.

5.3 Liberty Protection Safeguards

- 5.3.1 In response to common law changes the Government appointed the 'Law Commission' to report on the future of DoLS and the requirements for legislative amendments. Their recommendations concluded to repeal the existing DoLS authorisation process and replaces it with a new regime, 'Liberty Protection Safeguards' (LPS).
- 5.3.2 The new LPS aim to reduce the bureaucracy of current processes and applies safeguarding protections to all care settings. The body responsible for the care and treatment of a person will authorise the safeguards as 'necessary and proportionate', with a second tier of safeguards being performed should the person object to the arrangements. Here, objection will be further investigated by the new role of 'Approved Mental Capacity Professional'.
- 5.3.3 Where the subject of a deprivation is undergoing treatment in a hospital setting or as part of Continuing Health Care the relevant NHS Trust, Clinical Commissioning Group or private healthcare setting will assess and authorise arrangements; thereby relieving pressure on Local Authorities.
- 5.3.4 Other changes involve the Mental Capacity law being aligned to Mental Health legislation in terms of age criteria (applying to those 16 years of age and older), arrangements being transferable to different care settings, and review periods being extended (in certain circumstances).
- 5.3.5 The 2018 Mental Capacity (Amendment) Bill gained Royal Ascent in May 2019 with a view to implementation going 'live' in October 2020. This will involve a period of transition (and cross-over) with DoLS, finishing in October 2021. Currently care settings are awaiting the related 'Code of Practice' for the LPS to look at implementation requirements.

6.0 EVIDENCE, ANALYSIS AND CONCLUSIONS

6.1 The Council role in the DoLS process, and current position related to risk

- 6.1.1 At the start of the scrutiny process the Board were provided with a comprehensive overview of DoLS legislation by the Principal Manager of the Council's Safeguarding Adults Unit.
- 6.1.2 The Board learned that those eligible for DoLS are supported by the Local Authority area in which they have 'ordinary residence', and that this means that some out-of-borough placements require authorisation by the Council. It was confirmed that the resource impact of this was not great.
- 6.1.3 The implications of the 2014 judgement (See Section 5.2.6) were the subject of discussion around risk, both in terms of potential unauthorised deprivation and increased resource requirements against the backdrop of no additional funding from central Government.
- 6.1.4 Explanation was given of the Council's response to the increase in request for DoLS since 2014 and it was clarified that the Council's Integrated Adult Safeguarding Unit monitor a current backlog of cases (awaiting assessment and authorisation) against a robust screening tool. Halton Borough Council backlog figures were given in comparison to neighbouring authorities and while a backlog remains the comparisons were favourable.
- 6.1.5 Oversight of the Council's role in the DoLS process, including where cases require 'Court of Protection' authorisation (where the service user is in Supported Living accommodation), is maintained through the Integrated Adult Safeguarding Unit and monitored through monthly reporting and statutory performance data returns.
- 6.1.6 In all presentations heard by the topic group requirements for legislative change were made clear and proposed transformation was explored. Expectations and requirements under the LPS were cited, including their implications for the Council. These are further discussed in Section 6.7

Conclusions

- The current legislative process serves a valuable role in safeguarding the welfare and liberty rights of the individual.
- Case law changes have impacted significantly on the resource requirements of Local Authorities and are a determinate factor in the need for legislation reform. Delivery against current caseload requirements, with current resources is unrealistic.

6.2 Monitoring and reporting of DoLS

- 6.2.1 Accurate, timely and consistent record keeping was explored as a vital element to assuring that DoLS arrangements are legitimate. The Board were advised as to the monitoring mechanisms adopted by the Council and reporting requirements placed on the Authority.
- 6.2.2 As DoLS are a statutory arrangement annual data reporting from the Council is mandatory. It was reported to the Board that the impact of the increased caseload following the 2014 judgement has similarly increased the data involved in the annual return. As a result the Adult Social Care Performance Team work closely with the Integrated Adult Safeguarding Unit to ensure records are kept up-to-date.

Conclusions

- Monitoring of performance data for statutory returns is unwieldy and while the implications of change under new legislation are not fully understood at present it is expected that they will ease administrative burden in the longer-term.

6.3 The role of the BIA

- 6.3.1 Within the Council's remit for DoLS the role of the 'Best Interests Assessor' (BIA) was further explored as a pivotal player in the assessment and authorisation process. It was reported that BIAs are registered professionals (Adults' Social Workers for the Council) who undertake additional post-graduate training, annual update training and an active responsibility in an ongoing rota.
- 6.3.2 While the Council had nine BIAs up to 2013/14 the impact of the 'Cheshire West and Chester' case has increased assessment and authorisation requirements to such an extent that now a team of 28 BIAs operate across Adult Social Care for the Council. Due to the current backlog of cases overtime has been authorised across the work area.
- 6.3.3 Conducting up to four of the six assessments within the DoLS process the BIA role was explained as a vital safeguarding measure which ensures that any deprivation is legitimate. The Board were apprised with the knowledge that the 'Best Interests' assessment would always look at the 'least restrictive' options for giving care and support. They were told that this may result in conditions being recommended on the DoLS which would be reviewed and, if agreed, authorised by an Adult Social Care Divisional Manger.

6.3.4 An additional resource requirement was identified for Halton Borough Council in relation to the recent acquisition and internal management of four older people's care homes. Here it was explained that the Supervisory Body (the Council) and the 'Managing Authority' (the care setting) cannot be the same organisation. As such the Council are required to outsource those element of the assessments undertaken by the BIA. This currently incurs a cost of around £300 per assessment where a DoLS request is made for a resident of a Halton Borough Council Care Home.

6.3.5 The Board heard that those supported through Adult Social Services to access permanent care home placements go through a set of assessment processes. Any subsequent safeguarding needs can then often be dealt with responsively with supporting casefile information, and may even be picked up in assessment reviews.

'Self-funders' were highlighted to the Board as those who enter paid care placement through a private arrangement, without public funding and often without the support or prior involvement of Local Authority Social Services. For this group of people the Council is reliant on the care setting to flag safeguarding needs, and for those care providers under a commissioning contract with Halton Borough Council this is a requirement.

Early identification of safeguarding needs (by the care setting) was cited as pivotal to ensuring timely and lawful deprivation of liberties are made where self-funders are concerned.

6.3.6 Queries were raised around potential loss of tenancies for rented accommodation following detention under a DoLS. Confirmation was given that the majority of those entering care under a DoLS are older people and would not return home. Where a person is to go into full-time care arrangements and they reside in social housing and Supported Living a 'grace' period can be arranged before they have to vacate the property. It was reiterated that those coming through the Council's social work process are supported according to their individual needs.

Conclusions

- Members acknowledge DoLS as a complex legal safeguarding requirement in which the Local Authorities are currently required to play a central role.
- Person-centred working is fundamental to assuring that deprivations are legitimate and that DoLS arrangements are applicable to the individual needs of the service user/patient.
- The requirement on care settings to communicate the safeguarding needs of 'self-funders', (often previously unknown to the local authority, and who subsequently require Mental Capacity assessment and deprivation arrangements) needs to be re-stipulated as part of wider promotion and understanding of DoLS.
- Halton now owns four Care Homes which incur a cost implication for deprivation arrangements (external BIAs). This needs to be fully understood.

6.4 The role of the Section 12 Doctor

- 6.4.1 A multi-agency approach to deprivation was highlighted as essential to the safeguarding measures involved in a DoLS process. 'Section 12 Doctors' are medical professionals who are equipped to undertake the diagnosis of a 'mental disorder' and to assess whether that disorder results from a Mental Capacity of Mental Health need.
- 6.4.2 The Board were notified that the Council pay Section 12 Doctors, per assessment, as part of the DoLS process. It was confirmed that this is common practice and that a local agreement with neighbouring authorities has set charges for Section 12 Doctor's at £100 per assessment; however aligned to the overall increase in assessments and authorisations since 2014, a rise in costs for the appointment of Section 12 Doctor has been seen.
- 6.4.3 Good working relationships were emphasized in Halton between the BIAs and Section 12 Doctors. It was deemed that this retained the focus on the individual service user's needs and a person-centred approach to care and support.
- 6.4.4 The presentation delivered by one of the Council's commissioned Section 12 Doctors further emphasized the need for DoLS to be transferable between of care settings. At present re-assessment is required where the care setting changes and this incurs a financial cost.

Conclusions

- The role of Section 12 Doctors adds a further element of scrutiny to the DoLS processes and is working well in Halton.

6.5 Advocacy and DoLS

- 6.5.1 Halton Borough Council currently contract with 'Halton Healthwatch' for the delivery of independent advocacy services. This was introduced as both a legal and moral requirement for supporting those people with no alternative representation (e.g. family, carers). The role was described as practical and diverse, catering for people's different needs.
- 6.5.2 Advocacy services were explained as a statutory obligations which can be invoked under the Mental Capacity Act, the Care Act, and the Mental Health Act. Current resource for the borough involves two full-time posts and one part-time worker who deliver paid advocacy support under particular circumstances and at different stages in assessment processes.
- 6.5.3 For DoLS an 'Independent Mental Capacity Advocate' (IMCA) may be instructed by the Supervisory Body (the Council) at the start of the assessment process or following implementation of a legitimate deprivation. The Board were interested to learn that advocates can work in support of a service user themselves or in support of their representative (Relevant Person's Representative or RPR) where further understanding of procedure is required

or where there are challenges to the DoLS arrangements. In this sense the Advocacy service offers a further safeguarding step as part of the DoLS processes, as well as acting as a voice for the services user and often as an intermediary between families and social care services.

6.5.4 Advocates may also be working with services users or their carers outside of the DoLS process and may identify a need for a DoLS. Similarly to the work of the Section 12 Doctor strong relationships with the Council's Integrated Adult Safeguarding Unit were found to be a central factor in delivering effective and person-centred provision.

6.5.5 Members queried the advocacy resource requirements for out-of-borough placements. Reflections were made on the need to give greater consideration to Article 8 of the Human Rights Act – the right to see family – in respect of care placements outside of 'normal residency' area. Further response revolved around the increased need for services across the board, and due to the volume of DoLS following 2014, resulting in an increased lag in response time for picking up cases. It was anticipated that the new legislation would alleviate strain.

Conclusions

- Advocacy services are a vital commissioned life-line for independent support both within DoLS and wider social care processes.
- Services capacity in Halton is saturated under current legislation.

6.6 DoLS in practice – A CQC Registered service

6.6.1 Under current legislation the Council, as Supervisory Body in the DoLS process, authorise DoLS arrangements for Care Home and Hospital settings. During the course of the scrutiny review Members heard from the Registered Manager of a Residential Care Home in Widnes, receiving her account of working practices in the borough.

6.6.2 Details were given of the referral route for instigating DoLS and further endorsement was made of the support available through the Integrated Adult Safeguarding Unit, in particular looking at the training made available to Care Homes.

6.6.3 It was acknowledge that an authorised DoLS arrangement is seen as an integral part of a person's individual care plan and as such is regularly revisited and reviewed as part of the Care Home's casework audits. Where a DoLS arrangement comes under a standard authorisation (currently covering up to 12 months) the Home would report any change in care needs impacting on the arrangements as they arise.

6.6.4 Inquiry was made around turnover of staff across social care, nationally, and the potential impact this has on fulfilling training needs. For the particular Care Home showcased this wasn't deemed to be a problem.

6.6.5 Members asked about the involvement of family in choosing a Care Home in Halton. It was confirmed that information is made available on all Homes and settlement visits can be made prior to a decision being taken.

Conclusions

- The Independent Adult Safeguarding Unit work well with the agencies involved in the DoLS process, acting under a hub-and-spoke approach. It was felt however that greater interaction between all agencies could support better outcomes for service users.
- A need for public-facing, accessible and jargon-free information on the DoLS process was apparent to Members.

6.7 Liberty Protection Safeguards (LPS)

- 6.7.1 Interwoven throughout the topic group were references to, and plans towards, the implementation of legislative change. The DoLS framework has been repealed and will be replaced by the Liberty Protection Safeguards (LPS). Statute underpinning the LPS has been passed under the Mental Capacity (Amendments) 2019 and a Code of Practice is due to follow. Details were presented on current known requirements.
- 6.7.2 It was reported to the Board that the timelines for the implementation of LPS has changed a number of times - with the current proposed schedule illustrated in Appendix Three. This includes a transition period between DoLS and LPS.
- 6.7.3 The topic group learned that legislative reform aims to alleviate pressure on local authorities in particular. This will come in the form of a reduction in assessment processes (from six to three assessments), and fewer cases to be authorised by the Council with health services being responsible for arrangements in health-based settings.
- 6.7.4 The legislative changes have indicated that Care Homes could be responsible for authorising their own LPSs. Members heard that Halton Borough Council intend to retain oversight and maintain completion of assessment arrangements with commissioning Care Homes across the borough.
- 6.7.5 It was stated that under the new processes the BIA role (See Section 6.3) will change to that of an 'Approved Mental Capacity Professional' (AMCP). This will be a specialist role which undertakes further assessment where objections to an LPS are made. For all Authorities this will involve re-training implications; for Halton a consideration may arise where the role needs to be looked at in terms of parity with the current Approved Mental Health Professional (AMHP) role in Mental Health Services. This role is set at an Advanced level against the [Professional Capabilities Framework](#) for Social Work and is graded accordingly.

- 6.7.6 Amendments to the legislation will see the age criteria brought in-line with the Mental Health Act. This was well-received by Members in consideration of support for those with complex learning disabilities and those transitioning from Children and Family Services to Adult Services.
- 6.7.7 The Board identified that no additional funding has been identified to date for the implementation of the LPS. Concerns were also raised around the shifting timescales for the Code of Practice and the potential impact this has on the Council's readiness for implementation. The Board were assured with knowledge that Halton Borough Council have already established a working group to look at the changes.
- 6.7.8 Further measures to ease the burden for Local Authorities revolve around renewal period for LPS. Whereas current DoLS arrangements can cover a maximum of 12 months the LSP can be extended to three years following two periods of 12 months under the same arrangements.

Conclusions

- Measures to relieve caseloads on Local Authorities were welcomed.
- Intent for the Council to continue to oversee Care Home authorisations was acknowledged as an appropriate safeguard.
- No additional funding and condensed timelines for implementation place pressure on Local Authorities.
- The LPS implementation working group needs to consider the requirements in relation to re-training and staffing structures once the LPS Code of Practice is made available.

6.8 Financial Implications of LPS

- 6.8.1 As part of information presented to the Board details were given of the current budgetary requirements for fulfilling DoLS obligations in Halton. It was conveyed that a relatively static budget is currently allocated to DoLS in Halton. Members identified that this comes from the 'base' budget and no additional 'Grant Funding' from Central Government is given in relation to the requirements.
- 6.8.2 It was reported that the budget for DoLS is broken down into staffing and non-staffing costs. The former covering dedicated roles within the Integrated Adult Safeguarding Unit while the latter is allocated to the procurement of the services of Section 12 Doctors and Independent BIAs.
- 6.8.3 Recap was made of the anticipated increase in the need to pay Independent BIAs going forward as a result of the Council's in-house care home provision. (See Section 6.3). Confirmation was given that this is being considered as part of the LPS working group remit.

Conclusions

- DoLS, under current legislation, costs the Council around £50,000 per year.
- The implications of LPS on budgets is to be further investigated through the Council-led multi-agency implementation group.

6.9 Legal Implication of LPS

- 6.9.1 Elements of the information presented to the Topic Group from the Council's Group Solicitor echoed previous speakers and a succinct summary of impending legislative change was made.
- 6.9.2 It was understood that the involvement of the Council's Legal Services, for the most part, are in relation to applications to the Court of Protection being made. This requirement has, again, stemmed from case law and operates in relation to Supported Living settings. Confirmation was given that the quarterly monitoring reports brought to Policy and Performance Board do not currently cover these cases.
- 6.9.3 Consideration was given to the need to take cases through the Court of Protection where challenges to DoLS arrangements arise from family members. It was suggested that informal resolution would always be explored prior to the need for this, and that Advocacy Services would be involved in those circumstances.
- 6.9.4 It was confirmed with Members that the Court of Protection operates as a further step in the scrutiny process of DoLS arrangements. While it will serve the same function with LPS there are additional safeguards in the new processes, regarding situations where objections are made to the deprivation and in relation to the proposed AMCP role (See Section 6.7)
- 6.9.5 Reiteration was made of the alignment of the LPS legislation with the Mental Health Act in relation to age criteria, covering individuals from 16 years of age.

Conclusions

- Implementation of legislative change has further potential ramifications for the Council which Members would like to be kept informed of.

7.0 OVERALL CONCLUSION AND RECOMMENDATIONS TO HEALTH PPB

The Board found the review interesting and informative and extend their thanks to all involved.

They established that delivery of DoLS against the current legislative framework has seen a significant impact as a result of case law. As a result the resource implications for the Council have been challenging and legislative reform is welcomed.

The topic group recognise that Council management of staffing, finances, risk and reporting has been difficult following the significant increase in applications for DoLS. They commend the effective structures in place across all teams involved in DoLS processes and Council oversight and control of this situation.

Recommendations from the Board are made in consideration of the forthcoming changes under the Liberty Protection Safeguards (LPS).

Recommendations to the Health PPB:

Members recommend that:

1. The Council continue to work with the Association of Directors of Adult Social Services (ADASS), the Local Government Association (LGA) and other relevant bodies to direct pressure at Central Government level in relation to additional funding needs associated with the implementation of LPS.
2. Endorsement is given to the proactive approach being taken to consider the requirements of legislative changes and the multi-agency working group arrangements being developed towards implementation of the new practices.
3. The increased cost implication for assessments for those people resident in Halton Borough Council owned care homes is recognised and the requirements are further planned into budgets.
4. Simplified information is developed to provide a better public understanding of DoLS, and LPS as its successor, which is easily accessible and jargon-free; and Members have access to this as well as relevant referral points. This is to be accompanied with further awareness raising (through the 'Provider Forums', contract meeting with commissioned providers, and via other mechanisms) with care settings to ensure that early identification of safeguarding needs is made, particularly for those people previously unknown to Adult Social Services (e.g. self-funders)
5. Regular reports are brought back to the Health Policy and Performance Board to inform Member on the implementation of LPS and indicate other associated practice, such as the volume of Court of Protection (community DoLS) applications managed by the Council and what resource implications these have.
6. Backing is given to the Council's standpoint on retaining oversight of the assessment processes for Care Home once Liberty Protection Safeguards are implemented.
7. Additional opportunity is explored on a regular and ongoing basis, and past the implementation of LPS, to bring together all agencies involved in the deprivation process (including the Local Authority, Advocacy Services, Section 12 Doctors, and Care Homes) to share best practice and identify development needs. It is recommended that this takes place annually as a minimum standard.
8. The constraints on advocacy services are recognised and the considered as part of the re-commissioning of provision.

Appendix One: Scrutiny Topic Brief

Topic Title: Deprivation of Liberty Safeguards

Officer Lead: Helen Moir – Divisional Manager – Independent Living

Planned Start Date: June 2019

Target PPB Meeting:

Topic Description and Scope:

This scrutiny review will examine the topic of Deprivation of Liberty Safeguards (DoLS). The study will look at the Council's duties under legislation, the processes for fulfilling these duties and the protection arrangements that safeguards adults who lack mental capacity from risk of harm. The Board intends to understand the impact of DoLS on the Council, the plans to embed legislative reform in light of the proposed Liberty Protection Safeguards and feedback on the proposed service improvement recommendations.

Why this topic was chosen:

Following landmark case law in 2014 the threshold for authorisation of a DoL was broadened resulting in a significant increase in applications to Halton Borough Council. This has created an ongoing pressure in relation to volume and capacity for case work, which has been highlighted as an area of risk by the HPPB. As such DoLS consistently remains a factors highlighted on the Council's Corporate Risk Register.

This Board aims to examine the risk factors associated with DoLS both in terms of impact on individuals and on the Council.

The Deprivation of Liberty Safeguards are embedded into the Mental Capacity Act 2005, being introduced as amendments in 2007 and brought into practice in 2009. The safeguards are aimed at protecting people's human rights and personal liberty in situations where mental capacity has been lost. The legal framework underpinning DoLS ensures that any decisions made on behalf of a person or actions being taken are in their 'best interests' and that they are not subjected to any unnecessary supervision, control or restrictions.

As part of its Adult Social Care functions the Local Authority authorises DoLS as the 'Supervisory Body' in the legally binding process. This involves a range of responsibilities within the assessment process and the development of Adults' Social Workers as 'Best Interests Assessors', a designated role within the process which requires ongoing maintenance of knowledge and experience.

The Board will examine Halton Borough Council's role within DoLS, looking at resource requirements and efficiency of process, with the view of ensuring those most vulnerable in our community have their rights protected and their liberty safeguarded.

Key outputs and outcomes sought:

- To understand the DoLS, when and why they are enacted and what protections they offer individuals who lack mental capacity.
- To appreciate the Council’s role in authorising DoLS and examine the resource implications of this.
- To consider the risks associated with non-fulfilment of DoLS authorisation duties and the control measures in place to mitigate risk.
- To recognise the performance monitoring processes for maintaining an overview of fulfilment of DoLS and the mechanisms for reporting back to Senior Management Team.
- To ensure the process and procedures for achievement of the Council’s duties are effective and efficient.
- To reflect on those at risk of unlawful deprivation and the need to offer protection through interim processes (emergency authorisation).
- To evaluate the Council’s work in partnership with care setting across the borough in communicating the legal requirements associated with DoLS.
- To benchmark Halton Borough Council’s performance in the authorisation of DoLS in comparison to neighbouring authorities.
- To identify the change management process required to implement impending legislative changes.

Which of Halton’s 5 strategic priorities this topic addresses and the key objectives and improvement targets it will be help to achieve:

A Healthy Halton – To create a healthier community and work to promote wellbeing and a positive experience of life with good health, not simply an absence of disease, and offer opportunities for people to take responsibility for their health with the necessary support available.

- Promote independence of older people and vulnerable groups
- Improve Safety, Equality and Efficiency: Planned and Urgent Care
- To safeguard adults who are more vulnerable to physical, financial, sexual and emotional abuse

Nature of expected/ desired PPB input:

Member-led scrutiny review of the Health Improvement Team service and the difference it makes to the health and wellbeing of local residents.

Preferred mode of operation:

- Meetings with/presentations from relevant officers from within the Council and partner agencies to examine current services.
- Visit to community-based intervention sessions.
- Interviews with those who have accessed services.
- Desk top research in relation to outcome measures and best practice delivery methods.

Agreed and signed by:

PPB chair Officer

Date Date

Appendix Two: Schedule of Activity

Health Policy and Performance Board - Deprivation of Liberty Safeguards – Scrutiny 2019-20 – Schedule of Activity

Topic: Deprivation of Liberty Safeguards

Meeting	Action	Objective/Outcome	Responsible Officer
Tuesday 18 th June – Board Meeting	Board formally agree of Topic Brief		
Date: Tuesday 23 July Time: 5.30pm to 7pm Venue: Committee Room 1, Runcorn Town Hall.	Overview of DoLS – policy, procedure and practice – highlighting associated risks Performance monitoring of DoLS	<ul style="list-style-type: none"> • To understand the DoLS, when and why they are enacted and what protections they offer individuals who lack mental capacity. • To consider the risks associated with non-fulfilment of DoLS authorisation duties and the control measures in place to mitigate risk. • To ensure the process and procedures for achievement of the Council's duties are effective and efficient. • To benchmark Halton Borough Council's performance in the authorisation of DoLS in comparison to neighbouring authorities. • To recognise the performance monitoring processes for maintaining an overview of fulfilment of DoLS and the mechanisms for reporting back to Senior Management Team. • To benchmark Halton Borough Council's performance in the authorisation of DoLS in comparison to neighbouring authorities. 	Dean Tierney – Principal Manager (Safeguarding) Suzanne Shepherd – Practice Manager – Policy, Performance and Customer Care

<p>Date: Wednesday 11 September Time: 5.30pm to 7pm Venue: Civic Suite, Runcorn Town Hall.</p>	<p>Section 12 doctor – role in the process and experience of working with Halton</p> <p>Independent Mental Capacity Advocate – role in the process and experience of working with Halton</p> <p>Registered Manager – care and support service working with DoLS on a day-to-day basis</p>	<ul style="list-style-type: none"> • To evaluate the Council’s work in partnership with care setting across the borough in communicating the legal requirements associated with DoLS. 	<p>Dr Syed Javid – confirmed (short presentation and questions)</p> <p>Gill Valentine (Q and A)</p> <p>Claire Richards, Halton View</p>
<p>Date: Wednesday 6 November Time: 5.30pm to 7pm Venue: Committee Room 1, Runcorn Town Hall.</p>	<p>Best Interests Assessor – role in the DoLS process</p> <p>Resource implications for the Council</p> <p>Legal implication for the Council</p>	<ul style="list-style-type: none"> • To ensure the process and procedures for achievement of the Council’s duties are effective and efficient. • To ensure the process and procedures for achievement of the Council’s duties are effective and efficient. • To appreciate the Council’s role in authorising DoLS and examine the resource implications of this. • To consider the risks associated with non-fulfilment of DoLS authorisation duties and the control measures in place to mitigate risk. • To reflect on those at risk of unlawful deprivation and the need to offer protection through interim processes (emergency authorisation). 	<p>Steve Westhead, Practice Manager</p> <p>Neil Miller, Finance Officer</p> <p>Marion Robinson, Group Solicitor</p>

Date: Tuesday 10 December Time: 5.30pm to 7pm Venue: Committee Room 1, Runcorn Town Hall.	Review and recommendations		Chair – Cllr Joan Lowe
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Appendix Three – Government timescale for LPS implementation

Implementation of the Liberty Protection Safeguards

Objectives

Successfully implement the new system

- Effectively implement the new system, by working jointly across the health and care sectors.

In a way that

- Ensures the right people are getting the right protection at the right time (removal of the backlog alongside implementing LPS and better access to safeguards);
- Improves quality and experience of care through an improved system;
- provides better value for money; and
- removes variation to provide a more equitable system.

So that

- The sectors are ready to deliver the new system;
- people receive better quality care with minimum restrictions;
- their views and wishes are part of any LPS authorisations; and
- their families and carers are fully involved, and they have access to safeguards which are well supported and swiftly delivered.

This will result in the empowerment and protection of vulnerable groups.

Workstreams



Planned Milestones



Appendix Four – Presentations (ATTACHED SEPARATELY)



IASU - DoLS
presentation 23.07.1



Dr Javaid - 11 Sept
2019.ppt



6.11.19 A1 LPS IASU
- BIA Presentation.p

Appendix Five – Meeting Minutes (ATTACHED SEPARATELY)



Health Policy and
Performance Board :



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Performance Board :



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Appendix Six - Glossary of terms developed for Members (ATTACHED SEPARATELY)



GLOSSARY OF
ACRONYMS.DOCX