

Health Policy and Performance Board – Scrutiny Group

Topic: Deprivation of Liberty Safeguards

Meeting Date: Wednesday 7 November 2019

Time: 5.30 to 7.30pm (meeting finished at 6.45pm)

Venue: Civic Suite, Runcorn Town Hall

Attendees:

- Cllr Joan Lowe
- Cllr Geoff Zygadlo
- Cllr Margaret Ratcliffe
- Cllr Pauline Sinnott
- Cllr Eddie Dourley
- Helen Moir
- Steve Westhead
- Dean Tierney
- Marion Robinson
- Neil Miller
- Nicola Hallmark

Apologies:

- Cllr June Roberts

Agenda/Discussions	Actions
<p>Cllr Lowe led Introductions and thanked all for attending.</p> <p>Minutes of the last meeting agreed</p>	
<p>The Role of the Best Interests Assessor</p> <p>Steve Westhead, Practice Manager with the Safeguarding Unit gave a presentation.</p>  <p>6.11.19 A1 LPS IASU - DoLS presentation</p> <p>Steve reviewed the context of Deprivation of Liberty Safeguards (DoLS) in order to highlight where the Best Interests Assessor (BIA) role sits.</p> <p>Steve's presentation went through the six assessments that currently take place under DoLS.</p> <p>He indicated that generally speaking the Section 12 Doctor would undertake assessments of:</p>	

- Mental Disorder
- Eligibility

This leaves the other four assessment under the role of the BIA:

- Age
- Capacity
- No refusals
- Best Interests

He gave an overview of these assessments stating that the capacity and best interests may have already been undertaken as part of the care management process. This means that those people known to services and supported by the Local Authority may have had these assessments through social work intervention prior to a DoLs being sought. However, as part of the DOLS process they would have an additional capacity and best interests assessment.

Steve said that the role of the BIA was a safeguarding measure. The BIA ensures the deprivation is legitimate.

He stated that while those coming through social services with the Local Authority will already be picked up for assessment there is a potential gap where service users are self-funders. Here there is a reliance on the care setting to flag the requirements to assess.

Steve further explained the individual assessments:

Capacity – is a two stage test:

1. 'Does the person have impairment or disturbance in the functioning of the mind or brain?'
2. Where the answer to question one is 'no' then the person holds capacity. Where the answer to question one is 'yes', 'can the person make the relevant decision or not?'

No refusals – looks at whether an existing 'Last Power of Attorney' (LPA) for health and welfare matters is in place and whether this objects to any conditions of the DoL.

This raised a query around the different LPAs – Steve confirmed there are two aspects to them, one looking at financial decisions and one looking health and wellbeing issues. LPA covering both would need to state this.

Best Interests Assessment – examines the views and wishes of the individual prior to loss of capacity in terms of any contradictions to the proposed arrangements. This may involve discussions with family or carers and considers what is 'necessary and proportionate' to safeguard the welfare of the individual.

Steve pointed out that the Best Interests assessment may result in certain conditions being put on the DoLs arrangement and gave an example of a person heavily sedated where a DoLS might recommend a review of their medication if the sedation was disproportionate to need.

Steve said that the Best Interests assessment would always look at the 'least restrictive' options for delivering care and support.

Steve reiterated the DoLS 'acid test' at this point reminded Members that the subject of the DoL would need to be under continuous supervision and control and not free to leave.

He also reminded Members that currently a DoLS can be authorised for up to 12 months only – and open to review if changes occur.

Confirmation was given that BIAs must be a qualified professional with additional learning. He said that prior to the 2014 case law changes Halton has nine trained BIAs, they now currently have a rota of 22. These people, following qualification, additionally require a legal update on an annual basis.

Steve highlighted that BIAs employed by the council cannot assess individuals in our council owned care homes. It is not permitted that the statutory body and the managing authority are the same organisation. As a result additional funding is required for independent BIAs if a DoL is required in Madeline McKenna Court, Millbrow, St Luke's, St Patrick's or Oak Meadow.

Information was given around the role of the Relevant Person's Representative (RPR) who fulfils a monitoring role of the DoLS following authorisations. This is generally a family member or love one who is eligible to undertake the role. Where no RPR is available an advocate would be appointed.

Steve went on to say that once all assessment are complete they go to a signatory (relevant qualified Divisional Managers for Halton) for authorisation. If the BIA recommends conditions on the DoLS the signatory has to agree these for them to be enacted.

He stated that the signatory can also reduce the period of the DoLS if they feel there may be a change in circumstances.

Helen recapped that the DoLS were brought in to give an additional level of scrutiny. She asked Steve whether he thought they led to positive outcomes for the individual.

Steve expressed that it is important to add 'an extra set of eyes on the situation'.

The issue of self-funders being potentially overlooked was further brought up. Member suggested a recommendation that there needs to be some sort of procedure to capture self-funders in the borough and make sure they have access to the safeguards the framework provides. It was suggested that this needs to be something in writing to require managing authorities to inform the Local Authority (as Statutory Body) of self-funders.

Members raised queries around people with their own home who are taken into care. In particular where people rent could their tenancies be at risk?

Helen confirmed that the majority of people entering care under a DoLS are older people who will not return home. They are given six weeks grace for agreement to the arrangements before their property is vacated.

Further concern was raised around empty properties and possibility of vandalism. Helen specified that in the majority of cases there can be a lengthy Court of Protection process for family members to go through to gain ownership of the property.

The implications of the new Liberty Protection Safeguards (LPS) were discussed in relation to the suggestion of care home undertaking their own assessments. Helen confirmed that Halton will continue with assessment and will not be going down the route of having care homes authorise their own deprivations.

Recommendation: Members endorse the approach the Local Authority are intending to take in relation to the new Liberty Protection Safeguards and continuing to support care homes with assessment of deprivations.

The financial/resource implications of DoLS

Neil Miller, Adult Social Care Finance Officer, gave an overview of the budget requirements related to the delivery of the Council's duties around DoLS.

He said that the monetary side of the arrangements was relatively uncomplicated and involves a staffing budget and a non-staffing budget. The latter is currently set at £50K and covers costs for Section 12 Doctors and Independent BIAs.

Neil confirmed that this budget is relatively static and last year a total of £45K was paid out.

He said that the Section 12 Doctors have a set fee of £100 and that this cost has reduced as a result of a negotiated local agreement.

Confirmation was given that there will be an increase in the need for BIAs going forward to account for our in-house homes.

Helen established that this situation is to be monitored through the LPS working group and that a scoping exercise has already taken place to look at the numbers of DoLS within these settings.

Cllr Lowe asked whether we are up-to-date with DoLS or whether there is still a backlog.

Dean said that the current backlog is around 150 cases but that this was good in comparison to neighbouring authorities.

Neil clarified that funding for DoLS comes from base budget and that there is no central government grant funding related to the requirements.

Legal Perspectives

Marion Robinson, Group Solicitor for Halton Borough Council gave a handout with an overview of the legal aspects of deprivations of liberty.

She echoed previous speakers to the group by saying that the DoLS amounts to a legitimate breach of Article 5 of Humans Rights.

She gave an overview of proposed differences between DoLS and LPS, stating that LPS covers:

- 16-18 year olds (bringing it in-line with the Mental Health Act)
- A wider range of settings
- Is portable between settings
- A longer authorisation period (in certain situations/cases)

She suggested that the LPS look to be a simpler and quick process but that further requirements are still to be defined in the Code of Practice.

Dean shared a suggested timeline for implementation of the LPS.



LPS implementation
- DHSC plan on a pa

It was confirmed that cases are currently being taken through legal processes in relation to Court of Protection applications. This is mainly for those in supported living accommodation. Helen confirmed that the quarterly monitoring forms taken to PPB do not cover these but that the LPS should alleviate the burden of going through this process.

Marion indicated that the current backlog would not reduce significantly in the short-term following the implementation of the LPS, but will take time.

Members asked whether many challenges were made by family members. Dean stated that very few cases go through to the Court of Protection as a result of disagreement/objection to a DoL and that the Council would always look to resolve situation informally first.

Member went on to ask whether any objections were successful. Dean said that the majority of objections are due to conditions places on the DoL and that the Court of Protection adds additional scrutiny to the arrangements.

Dean stressed that the team look to manage family expectation in relation to DoLS, particularly where they may expect a higher level of care and may make a complaint around this. He confirmed that social services can't restrict family member from contact with the service user but the Court of Protection can.

Further information was given that the LPS will require three assessments instead of the current six and that if there is an element of objection the

<p>new Approved Mental Capacity Professional role will deal with this, rather than the current BIA.</p> <p>A concern was raised over the welfare of a particular young person in the borough. Dean reiterated that the LPS will come in-line with the Mental Health Act in that it will cover 16-18 years of age. He said this adds a level of scrutiny for cases involving younger people who may have conditions such a learning disability or an acquired brain injury.</p> <p>Marion recapped that the LPS is predicted to come in from October 2020.</p> <p>Member suggested a recommendation: PPB needs to be kept up-to-date of changes and their implications as they occur.</p>	
<p>Next meeting</p> <p>The Chair agreed that the next meeting would involve an overview of the information to date and the proposed recommendations coming from discussions.</p> <p>Recommendation will then be agreed to be incorporated into the final report.</p> <p>Cllr Lowe requested that Member endeavour to attend the December meeting where possible to ensure the recommendations agreed are unanimous and therefore robust. She acknowledged the close proximity to the election and expressed appreciation of colleagues' time.</p>	<p>HM to liaise with NH to look at a synopsis of information to date.</p>

Meeting closed: 18.45

Next meeting: Tuesday 10 December – 5.30 to 7pm – Committee Room 1