

REPORT TO: Executive Board

DATE: 19 March 2009

REPORTING OFFICER: Strategic Director – Health & Community

SUBJECT: Amendments to Standing Orders relating to changes in Mental Health legislation

WARD(S) Borough-wide

1.0 PURPOSE OF THE REPORT

1.1 This Report describes changes to mental health law that require amendments to delegated powers contained within the Council's Constitution.

2.0 RECOMMENDATION:

That the Executive Board:

- i) Note and approve the contents of this Report,**
- ii) Agree the additions and amendments to the Scheme of Delegation, as proposed in paragraphs 3.1.4 and 3.2.6**

3.0 SUPPORTING INFORMATION

3.1 Amendments to Mental Health Act 1983:

3.1.1 The Mental Health Act 2007 amends a number of the provisions of the 1983 Mental Health Act, although it is this latter Act which remains the primary legislation. The amendments were effective from in November 2008.

3.1.2 Under the 1983 Mental Health Act, Local Authorities were required to appoint Approved Social Workers to fulfil their statutory functions for assessment and, where necessary, compulsory admission to hospital, of people with a mental disorder which was associated with a significant level of risk. The previous Scheme of Delegation within the Constitution reflected this.

3.1.3 The 2007 Act removes as an exclusive function for social workers and gives it instead to a wider range of mental health professionals – social workers, community nurses, mental health occupational therapists and psychologists. They are re-named as Approved Mental Health Professionals (AMHPs).

3.1.4 However, the responsibility for approving and re-approving AMHPs – even though they may be employed by another organisation – still rests with Local Authorities, who must be satisfied that they have completed a complex level of training, and are competent to act as AMHPs. In addition, Local authorities are now able to authorise AMHPs from other Authorities to fulfil duties on their behalf. There is a need for Standing Orders to be amended to address these changes

3.2 Deprivation of Liberty Safeguards (DoLS):

3.2.1 The Deprivation of Liberty Safeguards were introduced in the 2007 Mental Health Act, but act as an amendment to the 2005 Mental Capacity Act. They are implemented as from 1st April 2009.

3.2.2 The DoLS were introduced to fill a gap in the legislation, which had been highlighted by a number of significant cases, some of which went to the European Court of Human Rights. The DoLS apply to people who lack capacity to make their own decisions about their care and treatment, who are either in hospital or in residential or nursing care.

3.2.3 On occasion, there is a need to provide a level of care and protection to people which amounts to a restriction on their liberty. This might involve preventing someone who has abused them from visiting them, or providing a security system on the entrance door of an establishment which prevents people from leaving.

3.2.4 The case law decided that, if these restrictions of liberty were added together in individual cases, this might amount to an actual deprivation of their liberty, without any scope for appeal to an external authority who could oversee this. This was deemed to be against their Human Rights. This contrasts with the position of people who are detained under the 1983 Mental Health Act, who can appeal for a review of their case to a legal Tribunal.

3.2.5 A new – and very complex – legal process has been established which requires Local Authorities to consider any potential Deprivation of Liberty under these circumstances, and to issue a time-limited authorisation for this as appropriate. In addition, a new staff role is established, known as Best Interests Assessor, who is required to complete at least one of the six assessments required as part of the authorisation process.

3.2.6 These two new levels of decision-making – authorising the Deprivation of Liberty, and Best Interests Assessor – will need to be included in the Scheme of Delegation. Along with the approval of AMHPs, it is recommended that this is delegated to Operational Director level, with the expectation that the roles themselves are delegated on further as appropriate.

4.0 **POLICY IMPLICATIONS**

4.1 In amending the Scheme of Delegation as proposed, this will allow the Council to fulfil its statutory obligations under the Mental Health Act 1983 and the Mental Capacity Act 2005.

5.0 **FINANCIAL IMPLICATIONS**

5.1 There are no financial implications associated with the proposed amendments to the Council's Constitution. The Department of Health have provided all Local Authorities with a time limited grant to introduce DoLS.

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

6.1 **Children & Young People in Halton**

A very small number of children and young people are subject to detention in hospital under the Mental Health Act 1983. The proposals allow the appropriate action to be taken by AMHPs under these circumstances.

The Deprivation of Liberty Safeguards only apply to people over 18.

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

None identified.

6.3 **A Healthy Halton**

The proposals support the delivery of the best possible care and support for vulnerable people with complex mental health needs.

6.4 **A Safer Halton**

The proposals allow for statutory intervention under the 1983 Mental Health Act for those people with severe mental illnesses who may pose risks to themselves or other people.

6.5 **Halton's Urban Renewal**

None identified.

7.0 **RISK ANALYSIS**

7.1 The only risk to the Authority arises if the proposals to amend the Scheme of Delegation are not approved, as the Council will not then be in a position to fulfil its statutory duties. This is not a key decision, however, and there is no need otherwise for a full risk assessment on these actions.

8.0 **EQUALITY AND DIVERSITY ISSUES**

8.1 Not applicable

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

Document	Place of Inspection	Contact Officer
Mental Health Act 1983	Runcorn Town Hall	Lindsay Smith
Mental Health Act 2007	Runcorn Town Hall	
Mental Capacity Act 2005	Runcorn Town Hall	
Mental Health Act 1983 Code of Practice	Runcorn Town Hall	
Code of Practice, Deprivation of Liberty Safeguards	Runcorn Town Hall	