
SELECT COMMITTEE ON HEALTH AND ADULT SOCIAL CARE

6th JULY 2010.

REPORT OF THE DIRECTOR OF ADULT COMMUNITY AND HOUSING SERVICES

DEPRIVATION OF LIBERTY SAFEGUARDS (DoLS)

PURPOSE OF REPORT

1. To update the Health and Social Care Select Committee on implementation of the Deprivation of Liberty Safeguards (DoLS), which came into effect from 1ST April 2009 as part of the Mental Capacity Act (MCA) 2005 as amended by the Mental Health Act 2007.

BACKGROUND

2. DoLS provide protection for people living in a care home or in hospital who are deprived of their liberty for the purpose of providing treatment or care; including people with dementia, acquired brain injury or a severe learning disability. They do not apply to people living in their own homes or supported living accommodation.
3. The Safeguards address the October 2004 European Convention on Human Rights (ECHR) judgment in HL v the United Kingdom (the Bournemouth judgment), which requires that people may only be deprived of their liberty through a process set out in law, with safeguards to prevent arbitrary detention and speedy access to a Court to review the detention.
4. The Deprivation of Liberty Safeguards make clear that a person may only be deprived of their liberty if:
 - it is in their own best interests to protect them from harm
 - it is a proportionate response to the likelihood and seriousness of the harm, and
 - there is no less restrictive alternative.
5. The Code of Practice states that authorisation should only be made for the shortest period necessary, up to a maximum period of one year.

Definition of Deprivation of Liberty

6. The Courts have made it clear that the question of whether someone has been deprived of liberty depends on the particular circumstances of the case. No simple definition can be produced that would apply in every case.
7. Deprivation of liberty is likely to occur when:
 - Health/social care professionals exercise complete and effective control over the person's care, residence, treatment, contacts and movements - what they can do; who they can associate with, or when and what they can eat.
 - The person is under continuous supervision and control.
 - The person is not allowed any freedom of movement within the care home or hospital
 - The person's behaviour and movement are controlled through regular use of medication or seating from which a person cannot get up
 - A decision has been taken that the person would be prevented from leaving if they made a meaningful attempt to do so.
 - The person is unable to maintain social contacts outside the care home or hospital because of restrictions placed on access to other people.
 - Family, friends or carers, who might reasonably expect to take decision under the Mental Capacity Act 2005 in relation to the person, are prevented from discharging them, moving them to another care setting visiting them, or from taking them out at all.

Implementation in Dudley

8. Dudley MBC and Dudley PCT jointly funded a project manager for DoLS/MCA implementation from November 2008 for one year. The post has now been extended until 31/3/10.
9. From 1st April 2009, hospitals and care homes (managing authorities) providing care have had a duty to apply to the appropriate supervisory body (PCT for hospitals and Dudley MBC for care homes) for a DoLS authorisation if they need to deprive someone of their liberty in order to provide the care the person needs, and it is in the person's best interests.
10. The supervisory body then commissions an assessment from a best interests assessor to determine whether the conditions for Deprivation of Liberty Safeguards are met.

11. There are two types of authorisation – standard and urgent. A hospital or care home must apply for a **standard** authorisation in advance of any deprivation. In these cases, assessments need to be completed and a decision made within 21 calendar days.
12. A hospital or care home can also give itself an **urgent** authorisation if it is already depriving someone of their liberty, provided it simultaneously applies for a standard authorisation. In these circumstances, the assessments must be completed within 7 calendar days commencing the day the urgent authorisation is given by the managing authority.
13. As of 30/4/10, 13 months after implementation, there have been 33 assessments (including reassessments) requested by nursing/residential homes of which 13 were authorised (about 39%). These relate to 26 individuals; the remainder were reassessments.
14. There have been 4 referrals from hospitals (2 from DGOH and 2 from Bushey Fields). All were authorized (100%). The overall figures (approximately one third of original estimates and just under half resulting in an authorisation) reflect the current national trends.
15. There are currently 5 authorisations in place (4 LA and 1 PCT) as all authorisations have been short, ranging from 17-181 days. The majority have been nearer the average of 63 days (around 9 weeks). The effect of ensuring that no-one is deprived of their liberty for longer than is absolutely necessary (in line with the code of practice) has necessitated a lot of administrative work to reassess or review and terminate within short timescales.
16. It is anticipated that the referral rate may increase in 2010-2011 as care homes and hospitals become more familiar with the criteria and the process. More Best Interests Assessors may have to be trained to deal with peaks of activity.
17. Dudley MBC/PCT trained twelve Best Interests Assessors (BIAs) prior to 1/4/09 (ten Dudley MBC, one PCT and one Dudley and Walsall Mental Health Trust). Some of these are no longer available due to job moves, promotion etc. Five Section 12 doctors (three from Bushey Fields and two learning disability psychiatrists) are currently practicing Mental Health Assessors for DoLS.
18. A further three social workers have trained as Best Interests Assessors and will be registered to practice in July 2010.
19. The Department of Health estimated that each best interests assessment would take an average of 8 hours. Where an authorisation is required, it has been found to take more than double this, with significant resource implications if the referral rate increases.

20. An Independent Mental Capacity Advocate (IMCA) is required to support some people through the assessment process. If an authorisation is given, a proportion will need a paid representative under the Act. Dudley Advocacy are currently undertaking both these roles within their existing IMCA contract. Dudley Advocacy have provided a paid relevant person's representative service for three people.

DoLS AUTHORISATION EXAMPLES

28. An 87 year old woman with dementia in nursing home. DoL authorisation given to administer covert medication to ensure compliance with injecting insulin. (She had previously had a number of hospital admissions due to complications with her diabetes.) Within two weeks, the woman was admitted to hospital and transferred to Bushey Fields. She has now moved to a specialist nursing home where the above care plan is no longer required. (If the care plan had needed to continue, both hospitals and the new home would have needed to apply for an authorisation.)

29. Another concerned a 44 year old woman with end-stage Multiple Sclerosis. The authorisation followed a safeguarding investigation and allowed staff within the nursing home to limit her mother's unsupervised access, due to concerns about injuries. (The mother had a serious mental health problem.) The woman was admitted to hospital where there were sufficient staff available to supervise mother's access without limiting her visiting, so a new authorisation was not sought. The woman has since died.

30. 74 year old woman with end stage MS funded by PCT, unable to communicate at all. In need of high level of care from non-specialist nursing home. Nursed in bed and peg-fed. BIA decided that deprivation of liberty was occurring because request by relatives to discharge Mrs A was refused. DOL authorised for 6 weeks to allow further work to be undertaken with family to get their agreement not to discharge mother and ascertain full extent of Mrs A's ability to communicate. Further authorisation not required.

FINANCE

31. The Council received a grant of £195,000 in 2009-10 from Department of Health for implementation of the Mental Capacity Act, including the Deprivation of Liberty Safeguards. The grant has funded the project manager's post, training of best interests assessors and the administration of the authorisation process. The allocation for 2010-11 is £187,000.

LAW

32. The relevant legislation is the Mental Capacity Act 2005; and the Mental Health Acts 1983 and 2007.

EQUALITY IMPACT

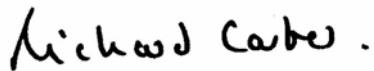
33.The Mental Capacity Act and the Deprivation of Liberty Safeguards provide protection for people living in a care home or in hospital who lack capacity and are deprived of their liberty for the purpose of providing treatment or care

RECOMMENDATION

34.Select Committee is asked to note and comment on this report

A handwritten signature in black ink that reads "Linda Sanders". The signature is written in a cursive style with a large, looping initial 'L'.

Linda Sanders
Director of Adult, Community and Housing Services

A handwritten signature in black ink that reads "Richard Carter". The signature is written in a cursive style with a large, looping initial 'R'.

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