

Briefing Note on Deprivation of Liberty Safeguards (DoLS)

What are DoLS?

DoLS are a means to safeguard the human rights of some of the most vulnerable people in society.

Where a person is assessed as unable to make a decision about their residence and care in a hospital or care home because of a mental disorder (eg. dementia, brain injury, learning disability etc) these decisions are taken using the legislative framework of the Mental Capacity Act 2005.

For some people the arrangements made for their residence and care may amount to depriving them of their liberty and in such circumstances additional safeguards are required. These are set out in the Deprivation of Liberty Safeguards 2009 which are an amendment to the Mental Capacity Act.

The Safeguards

Care and support regimes in hospitals and care homes which amount to a deprivation of liberty must be authorised by the local authority (the supervisory body) who must commission a series of assessments from social workers (known as best interest assessors (BIA)) and doctors (known as eligibility and mental health assessors). The assessments determine whether the way in which the support is delivered is the least restrictive possible, is necessary to prevent harm, is proportionate to any risk, does not adversely impact on the persons mental health and does not conflict with other legal arrangements (eg. any lasting power of attorney for welfare which a family member holds). The local authority in authorising the arrangements which amount to deprivation are able to specify conditions for the care home or hospital which must be adhered to.

Cheshire West and the Supreme Court

The Supreme Court in March 2014 clarified the circumstances which amount to a deprivation of liberty in a case commonly known as

'Cheshire West' and gave guidance commonly referred to as the 'acid test'.

A person is likely to be deprived of their liberty if they are not free to leave and are under continuous supervision and control.

An example of someone deprived of their liberty could be an older person with dementia living in a care home where, because of their vulnerability they would:

- be prevented from going outside without supervision
- be prevented from leaving (apart from to go to a care home with a similar level of supervision)
- and within the home be provided with support and intervention on a continuous basis (for example to ensure that they eat, maintain hygiene, and don't fall and injure themselves.)

The Importance of the Supreme Court Decision

This is a major change from previous court of protection guidance on the circumstances which amounted to a deprivation of liberty. Previously local authorities were asked to consider issues such as whether the person being cared for objected to the arrangements and whether the arrangements were similar to those made for other people with a similar level of disability.

The Supreme Court has ruled that these factors must not be taken into account when determining whether a deprivation is taking place. Consequently many more people with arrangements made for their care which are not unusual for their level of disability and to which they do not object are eligible for safeguards under DoLS.

The Impact for City of York Council

These changes, although providing safeguards to vulnerable people are having a serious impact on the workload and budget of the council.

In 2013/2014 there were 22 customers assessed for DoLS

To date there have been 90 in 2014/2015 we expect to receive over 240 in the year.

CYC is continuing to meet all its statutory responsibilities in this area

In addition there are approximately to be over 240 people in York who fit the 'acid test' but live in supported living schemes outside of the DoLS scheme which require an application to the Court of Protection (CoP). The Court specified in July how they wish these applications to be made. These have been scoped and the application for the first housing scheme requiring 28 individual applications is being prepared.

Costs to the Council

This increase in demand comes with considerable cost

Approximate costs

480 Assessments required from Doctors x £180 = £86,400
(mental health, eligibility and CoP3)

280 CoP application x £370 = £103,600
(Basic administration/application fee)

Independent BIA payments £450 x 50 = £ 22,500
(In house services and out of area)

Training Programme = £10,000

CYC Staffing costs

2 WTE Best interest Assessor £45000 = £90,000

1 WTE solicitor (internal) £60,000

1 Service Manager £45,000

1 Administrator £20,000

Advocacy Contract to support additional 480 customers £62,500

Total approximate budgetary pressure £500,000

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