

Deprivation of Liberty Safeguards

1. Purpose

To provide an update to Scrutiny Committee regarding:

- Applications and authorisations for deprivation of liberty under Deprivation of Liberty Safeguard provisions;
- Applications to the Court Of Protection for authorisation where people are subject to deprivation of liberty while living in the community

This paper is for information and discussion.

Background:

Following the Supreme Court Ruling re P v Cheshire West and Chester & P&Q v Surrey County Council [2014] Devon County Council along with other local authorities, continues to receive high levels of applications.

From April 2014 to date 6342 have been received. This is in stark contrast to the 725 applications received between April 2009 and March 2014.

This had had significant risk and resource implications for the Council, including that the DoLS service within Adult Social Care now has 2894 applications waiting assessment. In the majority of cases, Devon County Council as supervisory body will determine whether the deprivation of liberty is authorised. More recent case law (AJ v a Local Authority 2015) has highlighted the requirement to also make application to the Court of Protection where the person is objecting to the deprivation. The service has 23 cases at various stages of the court process compared to just 2 such cases 18 months ago.

The “acid test” which determines whether a person is deprived of their liberty also applies in situations where a person living in their own home in the community. The process for authorisation in such situations is through application to the Court of Protection. The Local Authority is responsible for making such applications where it is the agency leading support planning.

Changes to legislation are proposed following a Law Commission consultation. It is anticipated that the recommendations of the Commission and draft new legislation will be published in late 2016 but that implementation of a new regime will still be some time away.

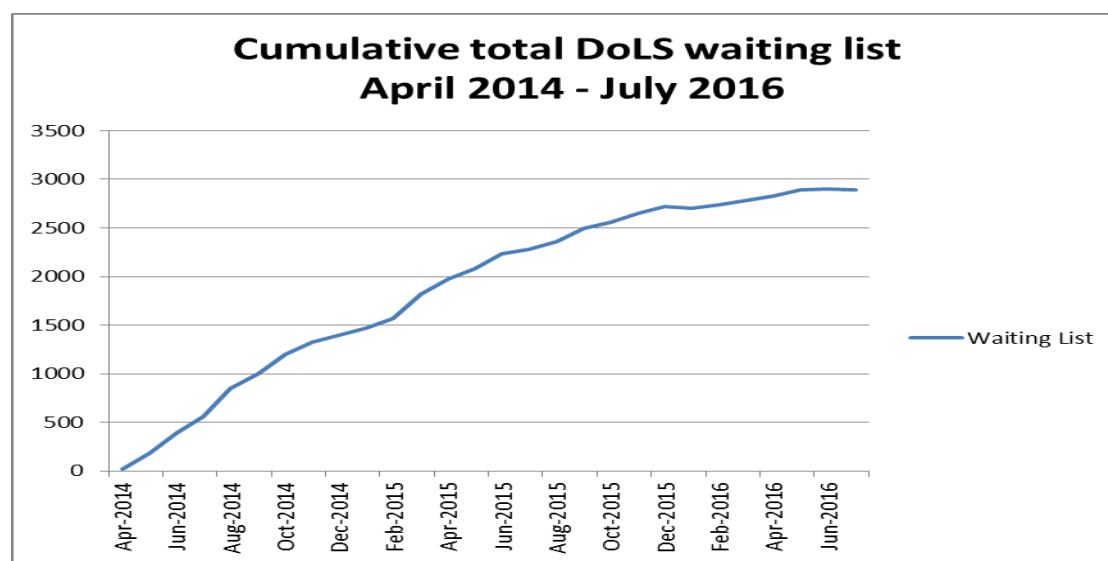
2.1 Deprivations of Liberty in Residential/Nursing care and Hospitals.

Applications to DCC continue to outstrip capacity to complete assessment and authorisation. The average application rate this year stands at 49 applications per week, with a completion / closure rate of 43 per week.

The DOLS Team provides a service which includes screening/prioritising incoming work; completing Best Interest Assessments; administration, commissioning and quality assurance for medical assessment; and offering a duty service supporting Managing Authorities, partner agencies and DCC staff. Further information about the staffing and activity of the team is included in Appendix A.

Where there is an objection to the placement either by the person or their representative, application to the Court also brings resource implications for Legal Services; as indicated above there are 23 such applications in process before the Court of Protection with a number still awaited.

Recent ADASS (Association of Directors of Adult Social Services) guidance suggests a paper-based desktop assessment process for renewal and low priority cases to reduce backlogs. Consideration is being given to cost, resource implications and the potential impact on the service's ability to manage complex cases.



2.2 Deprivations of Liberty in the community

The Care Management team will identify situations where authorisation is required and will support Legal Services to make application to the Court of Protection. During 2015, the Court has developed a streamlined application process, and Devon County Council has developed guidance for operational teams.

Situations where application to the Court is required are being identified during initial assessment and/or review, and the application is then progressed. So far, 5 Orders have been granted by the Court, and a further 40 are at various stages of the process. Notwithstanding the “streamlined process”, this can be a resource-intensive process both for Care Management Teams and Legal Services and it has been difficult for teams to find spare capacity within existing resources to be able to address what is an additional demand upon their time.

3 Risks

The risks to Devon County Council are as follows:

| Issue | Impact | Mitigation |
|--|---|--|
| Sustained increase in DoLS applications | Waiting time before authorisation | Prioritisation process (ADASS) adopted by DCC ¹ |
| Increased activity and cost | IMCA ² contract capacity | Contract re-negotiation + prioritisation |
| | Medical assessment/charge | Fee increase refused |
| | Care Management capacity | |
| | Legal Services capacity | |
| Legal challenge | Cost Reputation damage | Prioritisation seeks to address cases most at risk and where objections to care arrangements apply |
| Best Interest Assessor availability (staff skill mix and capacity) | Training cost Care management capacity | Training plan over 4 year period seeks to ensure in-house resource – limited mitigation with regard to cost. |

¹ Appendix 2

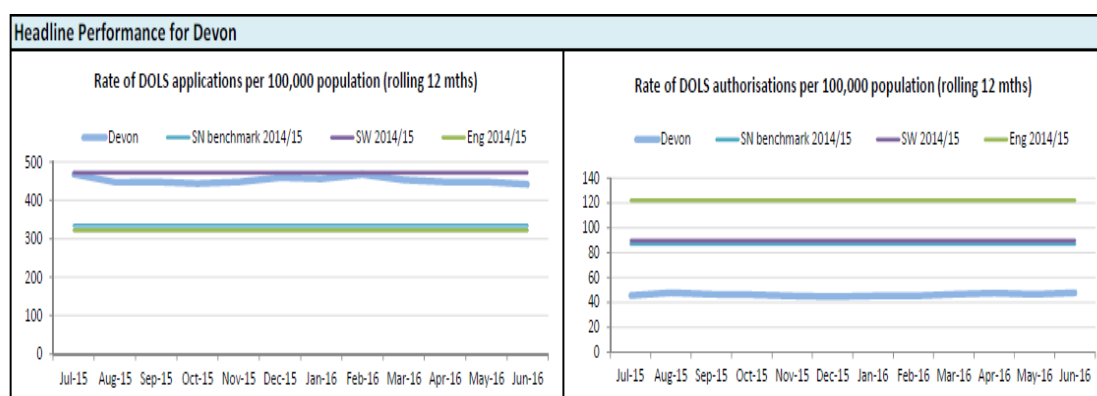
² Independent Mental Capacity Advocate – required where the person is otherwise un-befriended in the process.

The risks to people who are deprived of their liberty are:

| Issue | Impact | Mitigation |
|--|---|---|
| Deprivation of liberty is unauthorised | Restriction on right to - contact with family and community - freedom of movement - choice | Local Authority prioritisation seeks to address those cases where objections have been made |
| The authorisation process applies insufficient rigour (owing to high levels of demand) | Alternative options with less restriction are not made available | Staff training and investment by Devon County Council |

4 Performance

The tables below illustrate Devon's performance in receiving and completing authorisations for those people who are deprived of their liberty in residential, nursing, or hospital settings, compared with benchmark data for other Local Authorities.



The data shows a higher level of applications in Devon than as received by statistical neighbours and England average, although broadly in line with other authorities in the South West.

The data also shows a lower rate of DoLS authorisations in Devon. Significant investment in staff and/or other resources would be needed to close the gap.

Comparative data is not available for people who may be deprived of their liberty while living in their own homes.

5 Recommendations

Draft legislation is anticipated which will impact significantly in the near future. At this point, the recommendations from Adult Social Care Operational Service are:

- a. Continue current staffing level in DCC DoLS Service
- b. Assess potential and impact of desktop process in light of ADASS guidance
- c. Continue planned training programme to increase the qualified Best Interest Assessor resource over a four-year period.
- d. Ensure further report to Scrutiny Committee once impact of the new draft legislation has been assessed

Appendices

Appendix 1 – DoLS Service

Appendix 2 – Case prioritisation tool adopted by Devon County Council following ADASS guidance

Electoral Divisions: All

Cabinet Member for Adult Social Care and Health Services: Councillor Stuart Barker

Local Government Act 1972: List of Background Papers

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| Background Paper | Date | File Reference |
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Nil