

Maximising the delivery of the Deprivation of Liberty Service

Report of the Director of Integrated Adult Social Care, Devon County Council

Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.

1) Recommendation

The Health and Adult Care Scrutiny Committee:

- a) notes the content of the report and the work taking place to improve performance and outcomes for people subject to Deprivation of Liberty Safeguards
- b) considers inclusion of Deprivation of Liberty Safeguards in the Committees' work programme for 2025-26.

2) Background

- 2.1 Depriving an individual of their liberty is a significant step and should only occur when there is no less restrictive alternative available, where it is necessary and proportionate and where the deprivation of liberty is in accordance with a procedure prescribed by law.
- 2.2 The Supreme Court ruling in *Cheshire West* significantly widened the definition of deprivation of liberty. The judgment established the "acid test," stating that a person is deprived of liberty if they are under continuous supervision, control and are not free to leave.
- 2.3 This ruling led to a surge in DoLS applications because many more people in care settings, living with challenges such as dementia or learning disabilities, are now recognised as deprived of their liberty in the law. Local authorities nationally have struggled to process the increased volume of cases, leading to wide spread delays and backlogs.
- 2.4 The Deprivation of Liberty Safeguards (DoLS) is the legal framework in England that protects individuals who lack the capacity to consent to their

care and treatment. DoLS ensures that any deprivation of liberty in care homes or hospitals is lawful and in the person's best interests. The process involves assessments to confirm that restrictions are necessary and proportionate. All deprivations of liberty authorisations are only in place for 12 months, requiring a review of the arrangement to continue. These are court procedures with clear and mandated timescales.

2.5 For all other settings an application to authorise the deprivation will need to be placed before the Court of Protection in what we refer to as community deprivation of liberty applications (Comdol). An individual will be deprived of their liberty if:

- They lack mental capacity to consent to reside in a specific place for the purpose of receiving their care / treatment.
- They are under continuous supervision and control.
- They are not free to leave.
- The arrangements for their care and support are imputable to the state.

2.6 In the [ADASS Spring survey 2024](#), DoLS remained the third highest area of concern with 42% of Directors saying they are less than confident in meeting this statutory duty for 2024/25. The capacity to deliver a timely response for DoLS and Comdol are on the Council's risk register.

2.7 A further more detailed explanation of DoLS was provided through a DoLS masterclass for the Health and Adult Care Scrutiny Committee in November 2021. Members can access and recap via the Member area of the Council intranet. SCIE has also produced [at-a-glance guidance on DoLS](#)

3) Main body

3.1 Investment in the Deprivation of Liberty Service

3.1.1 The Deprivation of Liberty Service received an additional £500k in the 2024/25 budget to enable an additional focus on the more high-risk assessments including those who are objecting to their care and support arrangements.

3.1.2 The impact of this investment started to be seen in July after recruitment and training. In the 7 months between July 2024 and January 2025, an additional 195 Best Interest Assessments have been undertaken based on the same period the previous year.

We have seen an increase of over 60% in the number of assessments undertaken in January 2025 (129) compared to January 2024 (80) and January 2023 (75).

3.1.3 This has resulted in securing better outcomes for people through:

- Speedier removal overly restrictive care provision, and potential harm
- Delivery of Human Rights Act particularly Article 5 and Article 8:
 - Article 5 – Right to Liberty and Security: Protects individuals from unlawful detention, ensuring no one is deprived of their liberty except in specific legal circumstances (e.g., arrest, mental health detention) with proper safeguards.
 - Article 8 – Right to Private and Family Life: Protects personal privacy, family relationships, home life, and correspondence from unnecessary government interference, unless justified for public safety, national security, or crime prevention.
- Improved and quicker access to the safeguards provided by statutory advocacy
- Improved access to oversight and review by the Court of Protection.

3.1.4 The impact of this additional funding has also benefitted the Council through reduced financial and reputational damage including reduced risk of successful judicial review. All of the above we demonstrate to the CQC as part of inspection regime of Care Act duties.

3.1.5 A further investment of £1.5M each year over the next three years has been committed. This funding has three aims:

- To better manage the Deprivation of Liberty Service incoming work
- To actively reduce the waiting list
- To understand, and embed the improvements needed in practice and process relating to Comdol

3.1.6 Recruitment planning for the three years DoLS investment monies has already been formulated and agreed ready for go live on 1 April 2025 and the start of the anticipated availability of funding.

3.1.7 Alongside this work we are delivering efficiencies and improved productivity in care management through a programme called Leading and Managing Effective Workflows (LMEW). Delivery of LMEW will enable us to release capacity and resource during 2025/26 that will support the DoLS Service to increase assessment and review work.

3.1.8 This approach will provide the capacity to be more effective, and ultimately and most importantly to achieve better outcomes sooner for the people we serve.

3.1.9 Risks to achieving this include a rising number of DoLS applications that the Council may receive, this is particularly relevant for Comdol.

3.2 Structure of the Deprivation of Liberty Service

- 3.2.1 Existing arrangements ensure that secure systems are in place to provide oversight, risk management and assurance in terms of the application of the DoLS legal framework, and associated practice.
- 3.2.2 To provide the same level of oversight, risk awareness and assurance for Comdol, the central Deprivation of Liberty Service will be extended to become a single and central DoLS and a Comdol coordination Service.
- 3.2.3 This new single and central coordination function will support the key aim of understanding, and embedding the improvements needed in practice and process relating to Comdol, including:
- Centralised leadership and strategic planning
 - Clear lines of accountability
 - Management of workflow and oversight the individual's journey
 - Data collection / collation and assurance reporting
 - Mentoring and practice support from expert practitioners to the wider staff group in relation to the Mental Capacity Act and DoLS
 - Oversight of the Comdol process and practice standards
 - Identifying during assessment when someone has capacity or not
 - Recognising when a deprivation of liberty is required
 - Recognising when a deprivation of liberty is a result of a care plan
 - Supporting links with Legal Services and legal literacy
 - A focus on CQC inspection requirements

3.3 Ensuring the right level of capacity in the Deprivation of Liberty Service

- 3.3.1 DoLS Best Interests Assessors (BIAs) are professionals who assess whether a person deprived of their liberty under DoLS is lacking the capacity to consent to their care, that the restrictions they may be the subject of are necessary and proportionate, and that they are in a situation that is in their best interests. BIAs also check for possible less restrictive options and ensure the person's rights under the Mental Capacity Act 2005 are upheld.
- 3.3.2 BIAs play a critical and central role in any Deprivation of Liberty Service. Having the right level of BIA capacity is hugely significant in helping deliver the best outcomes for people.
- 3.3.3 Currently the Deprivation of Liberty Service has 18 FTE BIAs, of which 14.4 FTE focus on incoming activity. To achieve the aims set out above the Deprivation of Liberty Service requires a further 14.8 FTEs in the BIA role, bringing to total number to 29.2 FTEs.
- 3.3.4 The additional BIAs means we can do more, and quicker, to address incoming work and address the backlog. The increased work also requires additional roles, roles that deliver statutory functions with the overall statutory DoLS process. These roles include Section 12 doctors who are vital in the authorisation process. Likewise additional capacity is sought in the Independent Mental Capacity Advocacy. All of these roles and functions have been factored into the DoLS improvement plan.

3.4 Current performance

- 3.4.1 The productivity of the Deprivation of Liberty Service has been independently assessed as very good.
- 3.4.2 The sheer volume of DoLS applications being received, currently at over 700 per month means the waiting lists remain high. As stated earlier in the report DoLS waiting list are a national concern.
- 3.4.3 As of 23 February 2025, there were 3439 individual referrals waiting for a DoLS assessment. The median waiting time was 319 days with the maximum waiting time of 2226 days.
- 3.4.4 The Deprivation of Liberty Service triages requests for assessment based on the ADASS pro-forma and locally agreed priorities. This ensures that application for standard authorisations are dealt with appropriately regarding risk to the individual and the protection of human rights.

3.5 Future performance ambition

- 3.5.1 The new council investment will ensure additional capacity in the new financial year arrangements to recruit have started.
- 3.5.2 The DoLS plan will mean we are better able to manage demand. We anticipate over the next 5 years the waiting list will reduce by over 50% (3200 to under 1600)
- 3.5.3 Progress is monitored and reported at the Service Improvement Group

4) Options / Alternatives

N/A

5) Consultations / Representations / Technical Data

N/A

6) Strategic Plan

- Improve health and wellbeing, including any public health impacts
- Help communities be safe, connected and resilient

7) Financial Considerations

N/A

8) Legal Considerations

N/A

9) Environmental Impact Considerations (Including Climate Change, Sustainability and Socio-economic)

N/A

10) Equality Considerations

N/A

11) Risk Management Considerations

Related risks appear within the Risk Register

12) Summary

The Health and Adult Care Scrutiny Committee:

Name Tandra Forster Director of Integrated Adult Social Care

Electoral Divisions: All

Cabinet Member for Integrated Adult Social Care and Health: Councillor Phil Bullivant

Local Government Act 1972: List of background papers

Background Paper

Date

File Reference

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