



Leicester
City Council

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

Cabinet

9th March 2009

Partnership Arrangements for Deprivation of Liberty Safeguards Assessments.

Report of the Service Director, Adults and Housing Department

1. Purpose of the report

- 1.1 The purpose of this report is to seek Cabinet approval for the setting up of a joint Deprivation of Liberty (DOL) Assessment Service which will be hosted by Leicestershire County Council. The Service will be funded by Leicestershire County Council, Rutland County Council, Leicester City Council and the two N.H.S. Primary Care Trusts serving that area.

2. Summary

- 2.1 Local authorities will have a statutory responsibility under the DOL Safeguards amendment to the Mental Capacity Act 2005. They are required to receive requests for DOL authorisations and to provide independent assessments of vulnerable people (over 18). This will apply to people in residential care homes who lack capacity to consent to the arrangements for their care in circumstances where the care they receive will deprive them of their liberty, and they are not subject to the Mental Health Act 1983. The NHS have the same responsibility for patients in hospital settings.
- 2.2 The full implementation of DOL is detailed in a delivery plan to be overseen by the Leicestershire, Leicester and Rutland LIN (Local Implementation Network). Preparations are on track for full implementation by April 2009 as required by the Department of Health.
- 2.3 The proposals are being made to allow Leicester City Council to deliver, in partnership with Leicestershire County Council, Rutland County Council, NHS Leicestershire County and Rutland (the County PCT) and NHS Leicester City (the City PCT) the new statutory duty required by the Deprivation of Liberty (DOL) Safeguards. This support is in line with new duties placed on local authorities under the Mental Capacity Act 2005.
- 2.4 It is proposed to introduce the new arrangements, if approved, by the 1 April 2009.

3. Recommendations

Cabinet is recommended to:

- 3.1 Agree to the delegation of the City Council's social care functions to Leicestershire County Council for the purpose of enabling it to carry out Deprivation of Liberty Assessments on behalf of the City Council.
- 3.2 Agree that the Corporate Director of Adults & Housing Department, in consultation with the Service Director of Legal Services be authorised to negotiate and complete the partnership agreement.

4. Report

- 4.1 The Mental Capacity Act 2005 has been amended to include the new DOL Safeguards. They received Royal Assent in July 2007. The date of implementation for DOL Safeguards has been given as 1 April 2009. The Act recognizes that on a limited number of occasions some service users have to be deprived of their liberty in order to receive the appropriate care and protection they need. The DOL Safeguards provide legal protection for those vulnerable people (over 18) in residential and hospital settings, who lack capacity to consent to the arrangements for their care. The Act provides a mechanism to ensure that they have the same rights to review and appeal as those whose liberty is restricted by the Mental Health Act.
- 4.2 Implementation of the DOL Safeguards is being arranged through a multi agency Local Implementation Network (LIN). This Network has representatives from the three local authorities – Leicestershire, Leicester and Rutland, NHS Leicestershire County and Rutland, NHS Leicester City and other key agencies across Leicestershire, Leicester and Rutland including independent sector providers. The LIN has considered a range of options and determined that a single joint-funded team managed through a Partnership Agreement will be the most effective way to deliver this new statutory duty. Leicestershire County Council's Adult Social Care Service has been selected as the host organization for this service.
- 4.3 The DOL Team to be managed by the County Council will consist of four assessors with appropriate clerical support to provide a service across Leicester, Leicestershire and Rutland. The Team will carry out, and where required, commission assessments from qualified 'Best Interest Assessors' employed in each agency who have specialist skills and knowledge appropriate to the individual service user's needs. The Team will, through Health partners arrange for appropriately trained and experienced doctors to carry out those parts of the DOL assessments where a qualified mental health doctor is required.
- 4.4 Local authorities will be required to receive requests for DOL authorization from care homes, and arrange for two independent qualified assessors to carry out assessments. These assessments will determine if the DOL Safeguards apply and if it is in the best interests of the service user to be deprived of their liberty for a limited period in order to

receive the care the need. The NHS have the same responsibility with regard to requests for DOL authorization from hospitals.

4.5 Workload Implications

A Department of Health Random Impact Assessment estimated that referrals for authorisation of Deprivation of Liberty between April 2009 – March 2010 will be between 349 and 830.

Of these approximately 20% will be dealt with by Health whilst the remainder will be split approximately 60/40 between the County (including Rutland) and City.

Based on this calculation it is expected that between 2 – 6 requests for authorisation will be received by the City each week.

4.6 The executive of the three authorities and two health bodies who will be the subject of these arrangements have responsibility for action under the Mental Capacity Act. An executive of a local authority may delegate to another local authority or its executive as appropriate in whole or in part, any of its functions. The decision as to whether or not to accept such as delegation from another local authority is a matter for that council. Under the provisions of section 75 of the National Health Service Act 2006, NHS bodies may make arrangements for a local authority to exercise prescribed functions on their behalf. The proposals in this report allow further flexibility under the provisions of Section 113 of the Local Government Act 1972 which enables local authorities to make staff available to other authorities or health bodies and for health bodies to make staff available to local authorities.

4.7 The Partnership Agreement will enable the County Council to utilize Section 101 of the Local Government Act 1972 to carry out functions on behalf of the other local authorities. The Agreement will also include the delegation of powers under Section 75 of the National Health Service Act 2006 from the NHS to the County Council so the County Council can carry out functions on behalf of the NHS. In addition, Section 113 of the Local Government Act 1972 will be used to strengthen the core assessment team so that additional staff employed by each agency can undertake DOL assessments where required. The County Council will require the approval of their full Council to take on the functions required.

5. Financial, legal and other implications

5.1 Financial Implication (Rod Pearson)

5.1.1 The cost of developing the DOL Team will be met by funding allocated by the Department of Health to the City Council, other local authorities and the NHS as part of the Mental Capacity Act Grant. As such all funding will be from within the existing budget and there are therefore, no specific financial implications. The County Council will manage a pooled budget with contributions from all partners as follows:

	2009-10	2010-11
Leicestershire	£273,096	£258,212
Leicester City	£186,118	£177,453

Rutland	£15,159	£13,901
NHS	£63,249	£65,110
TOTAL	£536,575	£509,937

- 5.1.2 The Mental Capacity Act Grant is made available through the Area Based Grant process and has consequently been subject to the current ‘top slicing’ arrangement (4.94%)
- 5.1.3 The funding will be used to implement the DOL Safeguards, including the establishment of the DOL Team and to provide training to in-house and independent sector residential care staff.

5.2 Legal Implications (Cathy Healy)

The statutory duties of the authority under the Deprivation of Liberty Safeguard introduced into the Mental Capacity Act 2005 by the Mental Health Act 2007 are referred to in the body of the report at 4.1. The key point of the partnership agreement is delegation of the DOL assessments (carrying out, monitoring and managing them) to the County but statutory responsibility for the assessments in relation to Service Users whose ordinary residence is in the city remains with Leicester City Council and therefore we need to ensure we are happy with the assessments carried out and agree those assessment by signing them to confirm acceptance of them

Legal advice may be required and guidance/clarification needed on:

- the wording of the partnership agreement before it is signed
- the governance structure proposed
- procurement issues

6. Other implications

6.1

OTHER IMPLICATIONS	YES/NO	Paragraph Within Supporting information	References
Equal Opportunities Policy	Yes	Through Report	
Sustainable and Environmental	No		
Crime and Disorder	No		
Human Rights Act	Yes	Through Report	
Elderly/People on Low Income	No		

7. Background papers –
- Mental Capacity Act 2005
 - Local Government Act 1972
 - National Health Service Act 2006

8. Consultations.

9. Report Author/Officer to contact:

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Key Decision	Yes
Reason	Is significant in terms of its effect on communities living or working in an area comprising more than one ward
Appeared in Forward Plan	Yes
Executive or Council Decision	Executive (Cabinet)