



Leicester
City Council

WARDS AFFECTED
Type in Ward

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

Cabinet Briefing
OSMB
Cabinet

4th October 2010
18th November 2010
22nd November 2010

The Future Arrangements of the Deprivation of Liberty Safeguards (DOLS) Service under the provisions of the Mental Capacity Act 2005

1. Purpose of Report

- 1.1 To seek Cabinet approval for a three year rolling financial agreement for the provision of the DOLS service from 1st April 2011.

2. Summary

- 2.1 The purpose of this report is to review the first year of the Deprivation of Liberty Safeguards Service (DOLS) for Leicester, Leicestershire, Rutland and the NHS, to consider the options for the future of this Service and to seek approval for Leicester City Council's approach as one of the five partner organisations to future investment in this statutory area of service.

3. Recommendations (or OPTIONS)

- 3.1 The City will need to provide a DOLS service in some form and this Partnership has produced already in its first year of operation a nationally recognised service model and is providing a professional service to the vulnerable citizens of Leicester, as well as training, advice and support to colleague professionals in the City.
- 3.2 The other organisations in the Partnership have agreed in principle to a new agreement on a three year rolling basis and it is recommended that Leadership / Cabinet agree this too as the way of embedding this cost effective and necessary service to some of the most vulnerable citizens of Leicester.

4. Report

4.1 Background

4.1.1 The Deprivation of Liberty Safeguards (DOLS) is a later addition (2007) to the Mental Capacity Act (2005). It provides a legal framework for the lawful depriving of liberty of people who lack the capacity to consent to arrangements made for their care or treatment and who need to be deprived of their liberty to protect them from harm. These safeguards apply to adults aged at least 18 years, whose care and treatment is being delivered in a registered care home, or hospital, that has not been authorised already under the provisions of the Mental Health Act 1983.

4.1.2 The purpose then of the DOLS is to safeguard the rights of vulnerable adults living in care homes or who are in hospital from arbitrary decisions being made to deprive them of their liberty, and to provide a robust and transparent framework in which to challenge the authorisation of DOLS.

4.1.3 The DOLS came into force on 1st April 2009 since when registered care homes or hospitals (Managing Authorities) must seek authorisation from 'Supervising bodies', local authorities with adult social services responsibilities, in order to lawfully deprive a person of their liberty. There is a formal and set process for assessment involving a multi disciplinary approach, with strict timescales, before Supervising bodies can decide whether to exercise their powers.

4.1.4 The decisions of supervising bodies are challengeable in the High Court.

4.2 Partnership Agreement

4.2.1 A Partnership Agreement for the delivery of the DOLS Service in Leicester, Leicestershire and Rutland was agreed by the parties and the "Deed of Agreement" signed on 31st March 2009. It expires on 31st March 2011. Partner organisations passport their allocation of the Mental Capacity Act Grant to provide a single DOLS service, including the two Health bodies for Leicester, Leicestershire and Rutland.

4.2.2 A Local Implementation Network and a Commissioning and Assurance Group oversee the partnership Agreement and the DOLS service.

4.3 The DOLS Service

4.3.1 The core DOLS Team is hosted by the County Council and comprises:

- i. 1 x full time Team Manager
- ii. 4 x full-time Best Interest Assessors (BIAs),
- iii. 1 x full time Administrator and one half times Administrator.

In addition there are:

- iv. 20 x “floating” BIAs, employed by local health and social care partners and “loaned” to the DOLS Service on Section 113 arrangements.
- v. 25 x Mental Health Assessors, that is doctors who have been specially trained to carry out DOLS Mental Health Assessments
- vi. A DOLS Independent Mental Capacity Advocacy Service and a Paid Person’s Representative Service, local Voluntary Sector advocacy providers who provide this Service through spot contract arrangements.

4.3.2 The core team are not funded permanently, but through the Mental Capacity Act Grant and staff are either seconded into posts or on temporary contracts, all of which will end on the current agreement on 31st March 2011. There is one Best Interest Assessor post holder who is seconded from the City Council.

4.3.3 Leicestershire County Council’s Legal Section provides legal advice for the DOLS Service as part of DOLS Assessments and Authorisation Reviews.

4.3.4 Each local authority is responsible for signing off DOLS applications as the ‘Supervising Authority’. In Leicester City Adult social Care, this is presently delegated to a Service Manager in the Care Management Division.

4.3.5 Decisions about DOLS are challengeable in the Court of Protection. However, the Council’s DOLS Service operates on the principle that concerns about the deprivation of

liberty are resolved informally or through robust “complaints” procedures linked to the Service, rather than through the Court of Protection. This is very much in line with the national DOLS Code of Practice that aims to limit applications to the Court to cases that genuinely need to be referred there. So far, this has proved successful and several potentially costly applications across the Partnership have been avoided. However, with deprivation of liberty at stake, it will at times prove impossible to resolve concerns satisfactorily through other routes and an application to the Court of Protection will be unavoidable, if not desirable, particularly if it relates to potentially a point of law.

4.3.6 If a case is taken to the courts it is likely to prove expensive. While it is usually expected that each party bears its own costs, the Official Solicitor will expect his costs to be paid by the Applicant/legal aid. This has implications if the Applicant is the local authority.

4.4 Summary of First Year of Implementation

4.4.1 In its first year of operation 2009 - 2010, the Leicester DOLS Service has:-

- Successfully met all statutory requirements.
- Provided ongoing refresher training for Mental Health Assessors and BIA as required by the DOLS Regulations.
- Delivered 541 DOLS Assessments across the Partnership.
- Delivered 102 DOLS Authorisation Reviews across the Partnership.

4.4.2 Leicester’s summary of the figures is as follows:-

Overall activity

| | |
|--|----|
| Total numbers of referrals 01 Apr 09 – 31 Mar 10 | 92 |
| Total number of referrals granted | 63 |
| Total number of referrals declined | 29 |

Reason for declining authorisation

| | |
|----------------------------|----|
| Best Interests Assessment | 26 |
| Mental Capacity Assessment | 3 |
| Eligibility Assessment | 0 |
| No Refusals Assessment | 0 |
| Mental Health Assessment | 0 |

| | |
|----------------|---|
| Age Assessment | 0 |
|----------------|---|

Disability

| | |
|---|----|
| Physical Disability Frailty and/or Sensory Impairment | 56 |
| Physical disability, frailty and/or temporary illness | 40 |
| Hearing Impairment | 11 |
| Visual Impairment | 26 |
| Dual Sensory Loss | 8 |
| Mental Health | 78 |
| <i>of which Dementia</i> | 48 |
| Learning Disability | 18 |

Note: multiple designations

Age Group

| | |
|--------------|-----------|
| 18 - 64 | 33 |
| 65 - 74 | 14 |
| 75 - 84 | 16 |
| 85+ | 29 |
| Total | 92 |

Gender

| | |
|--------------|-----------|
| Male | 44 |
| Female | 48 |
| Total | 92 |

4.4.3 The DOLS Local Implementation Network has overseen the review and re-tendering of an updated Independent Mental Capacity Advocacy Service.

4.5 Key Findings from the first year

4.5.1 In summary the key findings are –

- Referrals to DOLS across the Partnership are in the mid range of what the Department of Health (DH) anticipated from its early modelling.
- Most referrals are for ‘urgent’ authorisation rather than a ‘standard’ authorisation. The ‘core’ team of DOLS has therefore had to focus on the former and the ‘floating’ BIAs on the latter.
- Rising demand for assessments and reviews of existing DOLS necessitated an additional BIA post in the ‘core’ team bringing it to current numbers. This has been justified by continued demand.

4.5.2 The demand for the Paid Person's Representative Service is currently at the estimated levels (20% of DOLS Authorisations). The existing "spot" contractual arrangements with providers are under review.

4.6 Independent Review

4.6.1 The DH reviewed implementation of DOLS Service nationally to examine variations in service delivery and developments by a sampling of DOLS services across England and Wales. The Leicester, Leicestershire and Rutland DOLS were one of those chosen. The DH published its findings and conclusions in January 2010. It said of the Partnership –

- Fulfilling its statutory responsibilities.
- Complying with the MCA DOLS Code of Practice and DOLS Regulations.
- Adhering to its own local policies and procedures.
- The 'model' of service demonstrates high standards and adheres to a person centred approach.

4.6.2 The findings of the independent Report highlighted -
'Excellence' in:

Design, Quality and Relevance
Effectiveness (Delivery of Service).

'Very good' in:

Efficiency of Planning and Implementation
Impact
Sustainability

4.6.3 There is now evidence that the model of good practice established by the Partnership is being followed by a number of local authorities and health bodies across other parts of the country.

4.6.4 The Commissioning and Assurance Group for DOLS has discussed options for the future of the Service and the partnership, given that the agreement ends next year. It

concluded that for the following reasons, the partnership should be renewed every three years, rather than annually or every two years: -

- DOLS is a statutory requirement designed to provide legal protection for the most vulnerable citizens in care homes or hospital.
- Demand for this service will continue if not grow as it is linked directly to safeguarding the vulnerable, driving up quality of care in residential homes and improving knowledge and practice amongst the wider health and social care community.
- This partnership has developed a wealth of expertise and learning in a short time such that has been recognised nationally.
- The Service is cost effective providing inter agency advice and support that if dismantled would have to be replicated in each local authority.
- Providing a three year rolling agreement, subject to review in each or every second year provides the Council with a more stable DOLS service.
- During this time more permanent arrangements for the City's contribution to the DOLS Team can be made.
- Providing a longer term agreement enables the DOLS service to mature and develop as part of the City's wider strategic development of its safeguarding function. This forms the foundation for a potential wider model of good practice for Leicester and its partners.

4.7 Options

4.7.1 Leicester City Council is required to make provision for the deprivation of liberty safeguards for people who may or do come within the terms of the Mental Capacity Act 2005. The Department of Health encouraged local councils and health services to combine where possible and practicable to provide jointly arranged services to ensure adequate cover of specialist skills and knowledge and economies of scale.

4.7.2 Leicester City Council embraced this concept from the outset and has had its efforts recognised nationally as good practice. Its option is to now embed this good practice in long term arrangements so that the expertise its staff and those of its partners can develop for the benefit of local vulnerable people, by agreeing the funding of a rolling

one, two or three year partnership agreement. It is recommended that arrangements for less than three years are not effective or efficient timescales within which to operate.

4.7.3 If this option is chosen then the post and position of the City staff member on 'loan' to the DOLs team will be addressed before the Agreement is renewed.

4.7.4 Alternatively, Leicester can decide to set up its own DOLS, but this will require either setting up a new team or ensuring that there is sufficient expertise and availability of expert staff across the City. Given that there are statutory timescales to the provision of these services, this is not a route for action to be recommended.

5. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

5.1 Financial Implications

5.1.1 The current DOLs Service is funded by the Mental Capacity Area Based Grant (ABG). The allocated ABG for 2010/11 is £182,200.

5.1.2 The full £182,200 is allocated to the County for this service. This does not include the cost of the City Council Manager, as mentioned above in 4.3.4. A 3% "hosting" fee is charged to us by the County for this arrangement.

5.1.3 There are risks attached to this funding. The Government could cut the grant either as part of the forthcoming comprehensive spending review or subsequently. Also the allocation of the ABG is in the hands of the Leicester Strategic Partnership and they may or may not allocate the same amount to Social Care in future years. Should funding be reduced then the Authority will have to decide whether the service should be reduced accordingly or whether to use main stream funding to make up the shortfall in which case reduced expenditure in other services will be necessary.

5.1.4 The City's seconded post to the DOLS is a social worker that is currently backfilled. If the postholder is successful in getting a permanent post within the DoLs team then, replacement of this post will be part of the recruitment exercise of the new organisational structure. Currently there is a base budget for this post (approx £38k)

which will either be recruited to or seen as a saving if not recruited to, depending on the new structure.

6. Legal Implications

- 6.1 The main report refers throughout to the legal obligations of Managing Authorities to seek authorisation from a Supervisory Body to deprive a person of their liberty. The arrangements in place since 01.04.09 have complied with the legal obligations, and should the Council not wish to renew those arrangements then an alternative will need to be found.

7. Other Implications

| OTHER IMPLICATIONS | YES/NO | Paragraph References Within Supporting information |
|-------------------------------|------------|---|
| Equal Opportunities | NO | |
| Policy | NO | |
| Sustainable and Environmental | NO | |
| Crime and Disorder | NO | |
| Human Rights Act | YES | ECHR Article 5 (1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:(e) the lawful detention of persons...of unsound mind, 5 (4) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. |
| Elderly/People on Low Income | NO | |

7. Background Papers – Local Government Act 1972

8. Consultations

- 8.1 Members of the inter agency Local Implementation Network have been consulted.

9. Report Author

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