



Report of the Director of Adult Social Services

Scrutiny Board (Health & Social Care)

Date: 6 May 2009

Subject: Update Report on Mental Capacity Act 2005 & Deprivation of Liberty Safeguards

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

1. The previous report to the Board of 12 November 2008 fully described the background to both pieces of legislation. This report describes in more detail the Deprivation of Liberty Safeguards (DoLS) which are applicable from April 2009.

Responsibilities are placed upon the Local Authority to lead the process, supported by a comprehensive Code of Practice which was published last year and is attached to this report.

Arrangements have been put in place, jointly with NHS Leeds, to meet the requirements of the Act and are described more fully within the report. It is recognised by the Department of Health that there is an ongoing requirement to oversee implementation issues in relation to the Mental Capacity Act over the next 2 years and Area Support Grant (ASG) funding has been made available to the Local Authority to support this task.

1.0 Purpose Of This Report

- 1.1 The purpose of this report is to update Members of the Scrutiny Board with regard to implementation in Leeds of the Mental Capacity Act and, in particular, the Deprivation of Liberty Safeguards (DoLS).
- 1.2 Members received a full report on 12 November 2008 which outlined the statutory requirements in respect of both pieces of legislation and attached to this were relevant background documents, including the Mental Capacity Act (2005), the Mental Health Act (2007) and the Articulate Advocacy Annual Report.
- 1.3 Subsequent to this a two-sided briefing note was circulated to all Members of the Council, as requested by Scrutiny Board.
- 1.4 This report provides an update on progress, specifically in relation to the DoLS which become law on 1 April 2009.

2.0 Background Information

- 2.1 The Mental Capacity Act is a wide-ranging piece of legislation aimed at protecting the interests of the most vulnerable people in our community who are judged to lack the mental capacity to make significant decisions in relation to their own life and circumstances.
- 2.2 As well as setting new duties for Local Authorities, as described in the original report, there is also a role in the co-ordination of implementation. This has been overseen by a Local Implementation Networks Board (LIN), since December 2006, chaired by the Deputy Director, Strategic Commissioning. A key requirement has been to work in close partnership with all organisations affected by the provisions of the Act, including NHS Leeds (formerly the PCT), the Acute Hospital Trust, Partnership Foundation Trust, Advocacy providers, and the Police with the support of LCC Legal Services. All of these have been represented on the Implementation Network Board.
- 2.3 The provisions of the Mental Capacity Act have been in place since April and October 2007. The DoLS introduced on 1 April 2009 are designed to prevent arbitrary decisions that deprive vulnerable people of their liberty by providing processes of application, assessment, authorisation and review when it is necessary to deprive a person of their liberty and provides them with representation and rights of review. The Safeguards apply in very specific circumstances, in Registered Care Homes and Hospitals, and regardless of whether a person is placed publicly or privately.

3.0 Main Issues

- 3.1 The DoLS create two new legal entities, Managing Authority (Care Homes/ Hospitals), who provide care and must request authorisation to deprive the liberty of an individual who is deemed to lack capacity, and Supervisory Body, who must organise assessments and issues authorisation of the outcome if the assessment requires them to do so.
- 3.2 Supervisory Bodies (SB) must arrange for the 6 assessments required to be carried out. These include an Age Assessment, Mental Health Assessment, Mental

Capacity Assessment, Best Interests Assessment, Eligibility Assessment and a No Refusals Assessment. The Mental Health Assessment must be carried out by a registered medical practitioner, the others by a Best Interest Assessor (BIA).

- 3.3 In discharging their responsibilities as a Supervisory Body, Local Authorities and Primary Care Trusts (the source of medical practitioners) need to ensure sufficient Assessors are available, ensure the Assessors have the necessary skills, qualifications and training to discharge the role, appoint the Assessors and ensure there is no conflict of role. Approved training courses have to be undertaken by both BIAs (mainly Social Workers) and Mental Health Assessors (medical practitioners) to ensure they have a thorough understanding of the legislation and their responsibilities.
- 3.4 These Safeguards are in addition to, and do not replace, other safeguards in the Mental Capacity Act. However, the Safeguards do expand the role of the Independent Mental Capacity Advocate (IMCA) and establish a role of Responsible Persons Representative for those who are totally unsupported but affected by these Safeguards. The Court of Protection has jurisdiction in relation to these Safeguards.
- 3.5 Appendix 1 is a pictorial outline of the process. Appendix 2 is a detailed flowchart outlining processes.

4.0 Implementation in Leeds

- 4.1 Since the last report, a great deal of detailed work has been undertaken in conjunction with NHS Leeds to put in place new structures and processes to support the new requirements. It has made both practical and economic sense, for the LA/NHS Leeds to agree all processes and have joint responsibility, as both organisations are Managing Authorities and Supervisory Bodies.
- 4.2 The main achievements are set out below in summary:
- Structure in place for Supervisory Body to discharge their statutory requirements. This includes a number of appropriately trained BIAs/MH Assessors, agreed processes for dealing with applications, staffing to support the process
 - Agreements between LA/NHS Leeds to cover issues associated with implementation of DoLS that are capable of refinement in the light of practice experience post-1 April 2009.
 - The expanded IMCA service and Responsible Persons Representative service having been commissioned.
 - 3 whole day events for Care homes/Hospitals in the city have been undertaken describing the Safeguards and their implications for Managing Authorities. Specific briefings have taken place with staff responsible for LA Care Homes. A further event is planned for May in the light of very high demand.
 - The Code of Practice (DoLS) has been widely circulated to Managing Authorities across the city.
 - Financial agreements have been reached with NHS Leeds within the ASG budget outlined in Section 5.

- Monitoring and reporting requirements have been agreed, including inclusion within ESCR systems.
- Links with the Department of Health regionally, through the Yorkshire Health Improvement Partnership, have been maintained.
- A Project Manager has been appointed within Adult Social Care to support implementation of both these safeguards and the Mental Capacity Act. NHS Leeds already have a Project Manager in place.

4.3 All indications from the Department of Health are that arrangements in Leeds have been robust and effective. In particular, the close partnership work with NHS Leeds has delivered efficiencies in implementation and clarity for those responsible for delivering these Safeguards.

4.4 The Department of Health is expecting the next 2 years to ensure the roll out of these Safeguards and the embedding of the Mental Capacity Act within Health and Social Care – the Implementation Network Board will need to oversee this.

4.5 Monitoring by the Care Quality Commission is likely to increase throughout 2009/10 but detail on what they will inspect is not yet fully clarified.

5.0 Financial Implications

5.1 Specific Grant funding has been made available to both the Local Authority and Health community in Leeds since 2006 to support the introduction of the new legislation and all its statutory requirements. The Grant has three specific elements; the first element is for Authorities to use in relation to the procurement of the IMCA service, the second in relation to ensuring the training needs of staff are addressed and the third recognises the overall management costs of introducing this scale of legislation.

5.2 The grant amounts are:

2006/07	£94,000
2007/08	£212,000
2008/09	£344,000
2009/10	£433,000
2010/11	£416,000

5.3 In addition, within the annual budget of NHS Leeds, £103,000 has been made available over the two years 2007 – 2009 to support the specific implications for the wider Health community.

5.4 The expenditure of the two funding streams has been co-ordinated by the LIN Board to ensure that the maximum benefit is derived and that the potential for duplication is eliminated.

6.0 Legal Implications

6.1 The legal implications are set out in Section 3 of this report. Legal Services have been fully involved with all aspects of the implementation of these Safeguards.

7.0 Conclusions

- 7.1 The provisions of the DoLS are a requirement of the Mental Health Act 2007 which have been placed within the scope of the Mental Capacity Act. They are a protective measure which potentially apply in specific circumstances. Whilst their potential impact in Leeds has been estimated at 500 applications per year, it will not be possible to know their actual impact until later this year.
- 7.2 The links to the Mental Capacity Act (2005) and the Mental Health Act (2007) are important but this is a significant set of Safeguards and balances in their own right. Awareness of the provisions will need to be raised across the whole of Adult Social Care and Healthcare over the coming months/years. Case law may also develop and the impact of the Safeguards will need to be carefully monitored.

8.0 Recommendations

- 8.1 Members are invited to consider the content of this report, to note the key features highlighted in it, to note the progress made to implementation, and the plans being progressed to raise awareness more widely in the city.
- 8.2 In view of the very recent introduction of the DoLS, Members may seek to receive a further update later in the year when the early actual impact could be reported. As this is a new statutory requirement it is important to monitor implementation and respond to any issues raised that were not anticipated.

Background Documents referred to in this report

Previously circulated Mental Capacity Act 2005/Mental Health Act 2007