



**Report of the Director of Adult Social Services  
Scrutiny Board (Adult Social Care)**

**Date: 9 September 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

The Board has received two previous reports, on the 12<sup>th</sup> November 2008 and 6<sup>th</sup> May 2009, on the Mental Capacity Act 2005 and subsequently the Deprivation of Liberty Safeguards (DoLS) requirements which form a substantial element of the overall legislation.

Responsibilities are placed upon Local Authorities to lead the process of implementation across the whole community and particularly in relation to health and social care. The processes introduced by the Mental Capacity Act and its Deprivation of Liberty provisions are supported by extensive and comprehensive Codes of Practice which were attached to the previous reports and are described within those reports.

In addition, members were provided with the 2007/08 Articulate Advocacy (providers of the Independent Mental Capacity Advocacy – IMCA – service for Leeds) annual report which provided extensive casework examples of the use of this legislation in practice. The 2008/09 report is appended to this report for further reference by Members.

Arrangements have been put in place, jointly with NHS Leeds, to meet the requirements of both pieces of work. The Department of Health has recognized that there is an ongoing requirement to oversee implementation issues with regard to this work and has made Area Based Grant (ABG) funding available to the Local Authority to support this task until April 2011.

At the same time both the Department of Health ( via regional Government Office representatives) and the Care Quality Commission have asked for data concerning the local progress on the implementation of the Act and its associated requirements. It is anticipated that such requirements will become integrated into the overall performance management arrangements for the Local Authority and its partners over time.

This report updates Members on progress in implementing the Act in Leeds.

## **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 2005 (MCA) and the Deprivation of Liberty Safeguards (DoLS).
- 1.2 Members received two comprehensive reports on 12 November 2008 and 6<sup>th</sup> May 2009 which outlined the statutory requirements in respect of both pieces of legislation. Attached to the reports were relevant background documents including the MCA Code of Practice, the DoLS Code of Practice, the Mental Health Act 2007 and the Articulate Advocacy Annual Report 2007/08.
- 1.3 Subsequent to this, a briefing note was circulated to all Members of the Council, providing general information of the Act and associated issues.

## **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 To briefly re-cap, 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 issue authorisation of the outcome if the assessment requires them to do so.
- 3.2 Supervisory Bodies (SB) must arrange for the 6 stage assessment which is required to be carried out. This includes an Age Assessment, Mental Health Assessment, Mental Capacity Assessment, Best Interest 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 The MCA is based on 5 key principles which are:
- A presumption of capacity
  - The right of individuals to make their own decisions
  - The right not to be treated as lacking capacity merely because of unwise or eccentric decisions
  - The need to ascertain what is in the best interest of the individual
  - Least restrictive interventions.
- 3.6 The main provisions of the Act (detailed in previous reports) include:
- Establishment of an Independent Mental Capacity Advocacy (IMCA) Service to support persons who lack capacity.
  - Two new criminal offences – ‘ill treatment’ or ‘willful neglect’.
  - Capacity defined.
  - Best Interest checklist.
  - Actions in connection with care/treatment to protect carers from liability.
  - Lasting Powers of Attorney (LPAs).
  - A new Court of Protection which has jurisdiction over the whole Act.
  - New Office of the Public Guardian to supervise Deputies and Powers of Attorney.
  - Court Appointed Deputies.
  - Advance decisions about refusing medical treatment.
  - Research issue guidelines.

#### **4.0 Implementation in Leeds**

- 4.1 As outlined in the previous reports coordination of implementation has been overseen by the Local Implementation Network Board (the LIN) since December 2006 under the arrangements set out at paragraph 2.2.
- 4.2 Since the last report the work programme, Terms of Reference and the work of both the LIN and the MCA/DoLS Implementation, Development and Monitoring (IDM) sub group have been updated to more accurately describe their continuing respective roles in rolling out the implementation and monitoring it's effective use. It is an ambitious programme which continues to require Adult Social Services to provide leadership and support to the partnership over the medium term. The revised terms of reference for the groups will be adopted in the autumn following ratification by partners.

- 4.3 The MCA, as previously highlighted, is a wide ranging piece of legislations aimed at protecting the interests of the most vulnerable people in our community but also providing additional rights for those not able to make their own decisions all the time.
- 4.4 Some examples of the areas of work in 2009/10 which appear in the work programme include:
- Development of an enhanced Communication Strategy, designed to continue to alert both staff and public to the overall requirements of the mental Capacity Act.
  - Development of a Workforce Development and Training Strategy and Implementation Plan to deliver effective and consistent training/development across all organizations in the City, including staff employed by Contact Leeds, in relation to the principles/requirements of both MCA/DoLS.
  - Ensuring sound links are in place in relation to other important initiatives which are being implemented to better protect vulnerable people, most notable ensuring that the closest links are maintained with colleagues engaged with the design of adult safeguarding systems in the City.
  - Ensuring that Performance Management, Quality Assurance and data management/reporting arrangements are in place to inform improvement and enable accurate/timely returns to be produced/submitted to relevant parties (e.g. Department of Health, Care Quality Commission (CQC), senior management, Inspectors etc.).
  - To Undertake an Equality Impact Assessment on the implementation to date.
- 4.5 Since the last report to the Scrutiny Board the DoLS have been implemented in Leeds. It made both practical and economic sense for the Local Authority and NHS Leeds to agree all processes and have joint responsibility for implementation as both organisations are both Managing Authorities and Supervisory Bodies.
- 4.6 The main achievements to date have been set out in summary below:
- Structures are in place for Supervisory Bodies to discharge their statutory responsibilities. This includes a number of appropriately trained Best Interest Assessors (BIAs) and Mental Health Assessors (MHAs), agreed processes for dealing with authorisation applications (referrals). Additional staffing to support the processes as well as the establishment of a communication centre for Managing Authorities/enquiries to contact for specialist advice.
  - In addition, information on DoLS authorisation processes and briefing notes has been provided to staff at Contact Leeds so that they can more appropriately deal with enquiries.
  - An expanded IMCA Service and a Responsible Person's Representative service has been commissioned from Articulate Advocacy.
  - 4 full day events for Care Homes/Hospitals (the Managing Authorities) have been undertaken which described the safeguards and their implications/new responsibilities. These were attended by over 350 delegates from the City and included both the Councils own directly provided units as well as independent sector organisations. A further event is planned for December 2009 to consider emerging issues arising out of the implementation to date.

- Additional targeted briefing sessions have taken place with staff within Local Authority Care Homes, ASC and other directorate service areas within the Council, independent sector Care Homes, PCTs including GPs, YAS and a number of voluntary sector organisations.
- Codes of Practice and all other relevant information have been widely circulated to Managing Authorities across the City.
- Financial agreements have been reached with NHS Leeds with the ABG budget outlined in Section 5.
- Monitoring and reporting arrangements have been agreed including inclusion of data on the Council's ESCR system.
- Links with the Department of health regionally, through the Yorkshire and Humber Improvement Partnership (YHIP) have been maintained. The Department of Health has required very regular (fortnightly now – originally weekly) reporting of activity data which has been adhered to.
- CQC regionally requested a full report on the Directorate's progress in implementing MCA/DoLS which was submitted in July 2009. This has been reflected in their regular business meetings with the Directorate as an area of interest for them.

4.7 DoLS activity @ 29<sup>th</sup> July 2009 was as follows:

<b>Supervisory Body</b>	<b>No of Authorisation referrals approved</b>	<b>No of Authorisation referrals not approved</b>
Leeds City Council	5	5
NHS Leeds	1	3

Number of additional enquiries received = 28

## **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.

5.5 The actual expenditure in relation to the DoLS service will be considered by both organisations on a 6 monthly basis and any action indicated will be coordinated by the LIN Board.

## **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 the Mental Capacity Act and associated DoL safeguards.

## **7.0 Conclusions**

7.1 The provisions of the Mental Capacity Act 2005 are wide ranging and requires that awareness of the provisions are raised not only in statutory and voluntary organisations but across the general public and all communities across the City.

7.2 The revised work programme recognises the challenges ahead and is very much in line with the Department of Health recognition that this will take many years to fully embed within practice. All indications from both the Department of Health and the CQC is that arrangements in Leeds have been robust and effective. In particular, the close partnership work with NHS Leeds has delivered efficiencies in implementation and a sound basis for the work going forward.

7.3 Whilst the number of DoLS applications have been lower than estimated, this is a very similar picture nationally. Whilst it has been a slow start numbers do seem to be increasing and will continue to be closely monitored for the foreseeable future. As indicated in this report we plan to undertake a series of initiatives commencing in the Autumn to assure ourselves that the managing Authorities understand the new requirements placed upon them.

7.4 The Mental Capacity Act is a wide ranging legislative instrument the use of which is becoming more widely understood as case examples are reported in the local and national media. Attached to this report is the annual report of the Articulate Advocacy organization which manages the IMCA service under contract to the local Authority. Their report, once again, provides vivid examples of the Act in operation.

## **8.0 Recommendations**

8.1 Members are invited to consider the content of this report, to note the key features highlighted within it.

8.2 Members are invited to recognize the progress that has been made in implementing the Act and it's associated requirements and to receive the examples of this progress highlighted in the Articulate Advocacy annual report

8.3 In view of the very recent introduction of the DoL safeguards, Members are invited to request a further update report in 9 months time, when a full year of DoLS activity data will be available for consideration.

**Background Documents referred to in this Report:**

- IMCA Annual Report 2008/09
- CQC/ Government office returns

**Previously Circulated Documents:**

- Mental Capacity Act 2005/MCA Code of Practice
- Mental Health Act 2007
- DOLS Code of Practice
- IMCA Annual Report 2007/08