

STOCKTON-ON-TEES BOROUGH COUNCIL

CABINET RECOMMENDATIONS

PROFORMA

Cabinet Meeting9th October 2014

1. Title of Item/Report

The implications of the Cheshire West and Chester Council and Surrey County Council Supreme Court Judgement Relating to Mental Capacity Act Deprivation of Liberty Safeguards

2. Record of the Decision

Consideration was given to a report that provided details of the changes to the Mental Capacity Act Deprivation of Liberty Safeguards following the Supreme Court Judgement on the Cheshire West and Cheshire Council and Surrey County Council cases. The implications for the Council in relation to this were also outlined, including details of the work in progress to identify the risks and resource implications of the revised legal framework.

Following the Supreme Court Ruling on 19 March 2014 : P -v- Cheshire West and Chester Council and P and Q -v- Surrey County Council, there had been a radical change to the legal definition of and the test for Deprivation of Liberty which must be followed.

There were two key questions that need to be considered when applying the test:-

- Is the person subject to continuous supervision and control?
- Is the person free to leave?

For a person to be deprived of their liberty, they must be subject both to continuous supervision and control and not be free to leave. They must also lack the mental capacity to consent to the relevant care and support arrangements, where they had been put in place by the State. Attached to the report were more details of the Judgment (a link to the full Judgment was embedded in the Department of Health letter).

As a result of this Judgment, a much greater number of existing and potential clients were considered within the scope of the Safeguards, including the care home population and people living in supported living, both within and outside the Borough, who were Stockton residents. These clients required assessments for mental capacity as the first stage

in the process. This included people with dementia, a learning disability, a mental health problem and young people between 16-18 with complex needs.

Future planned admissions to care homes and care planning for supported living needed to include an assessment for Deprivation of Liberty (DoL) before admissions to care homes were made / care packages were put in place.

The Deprivation of Liberty Safeguards (DoLS) for people in twenty four hour care settings aged 18 years and over (care homes and hospitals) remained as previously and consisted of six assessments to establish if the DoL was in the client's Best Interests and that care arrangements constituted the least restrictive option to ensure the safety and well being of the client. These assessments were carried out by Best Interest Assessors and doctors approved under the Mental Health Act 1983 (s.12). In complex cases, an application to the Court of Protection should be made. For clients living with support in the community and young people aged between 16 and 18 years, all Deprivations needed to be authorised through the Court of Protection. A Preliminary Judgment had been given by the President of the Court of Protection on the consummate cases presented in June 2014, which had clarified that all cases needed to be considered by a judge and that mental capacity assessments needed to be undertaken by a medical practitioner. Details of the Judgment were attached to the report.

Clients with mental health problems and / or a learning disability who were resident in, or assessed as needing care in, a hospital facility and would previously have been considered as 'informal' admissions, would need to be assessed for a Deprivation of Liberty Authorisation or for detention under the Mental Health Act. This would require more assessments to be carried out by Approved Mental Health Professionals (AMHPs) and, potentially, an increase in detentions under s.3 of the Mental Health Act, with the associated risk of an increased number of clients eligible for s.117 jointly funded NHS and Social Care aftercare. This was of particular importance for Stockton, as there were two independent Mental Health Hospitals in the area that provide Mental Health Services.

The Tees Coroner had decided that all deaths of people subject to an authorised DoL at the time of their death would be treated as a death in custody. The coroner would be informed of the each death and would decide if any examination of the client's records is necessary, on a case by case basis.

Following an initial scoping exercise, a work programme was in progress

to ensure that clients were not unlawfully deprived of their liberty. Working practices had also been reviewed to ensure that the new test was embedded in practice and risk to vulnerable clients and the Council mitigated as far as reasonably practicable.

The following dedicated resource was agreed by Corporate Management Team in May 2014 in order to support the required assessments, consideration for authorisation and administration of the Deprivation of Liberty Safeguards:-

- 1 WTE Social Worker to liaise with care homes and home care providers to co-ordinate mental capacity assessments and requests for authorisation of potential Deprivation of Liberty.
- 2.4 WTE Best Interests Assessors (BIA) to carry out the Best Interests Assessments.
- 0.5 WTE Administrator to assist with the significant amount of administration that is involved.

Client assessments were being prioritised by client group and care and support arrangements. The clients who had been identified as the first priority were those with dementia or a learning disability who were living in a care home. Clients with a learning disability who live in supported living arrangements were the group identified as next to be assessed. All people subject to Mental Health Act Guardianship, Community Treatment Orders and Conditional Discharge needed to be assessed for potential Deprivation of Liberty. Consideration also needed to be given to incapacitated people who had care needs met by the state but who were living at home with their families

The additional work was creating workload pressures across adult services including:

- Care Managers
- Best Interest Assessors
- Commissioning Managers
- Signatories
- Mental Health Assessors
- Approved Mental Health Professionals (AMHPs)
- Administrators
- Legal Services, particularly where authorisation of the Court of Protection would be needed, for example for clients in supported living arrangements.

The additional work for Commissioning Managers, who oversee the administration of the process, and Signatories, who consider the requests for authorisation, was being dealt with without additional resource.

Additional care management resource was required to undertake timely reviews of clients subject to an authorised DoL and so that Mental Capacity Assessments could be fully embedded in practice. Active care management was essential to ensure that any restrictions imposed continue to be proportionate and in each client's Best Interests.

There were also additional direct costs relating to:-

- Payments to Mental Health Act s.12 approved doctors, who are commissioned to carry out the required assessments for clients in twenty-four hour care settings.
- Payments to Independent Mental Capacity Advocates (IMCAs)
- Court of Protection applications for clients living in supported living arrangements. There are costs associated with the application, the hearing and the mental capacity assessment.

The initial exercise could cost up to £725,000. However, this was extremely uncertain and would be clarified as work progresses. The costs in this financial year were not expected to exceed £425,000 and this could be funded from managed surplus.

The next steps would be as follows:-

National

- A Task Group, led by the Association of Adult Social Services (ADASS), has been established to consider the implications of the Supreme Court judgement and to provide practical advice to Local Authorities on how they should respond.
- Voluntary quarterly activity returns have been established and will be collated by the Health and Social care Information Centre.
- Further guidance from the Department of Health is still awaited, but the Court of Protection Preliminary Judgment (Re X) on the consummate cases considered was given on 7.8.14, and is included as Appendix 3. In Re X the President has given guidance on the process for dealing with the anticipated large increase in cases in the Court of Protection. Further guidance and amended court documents will follow, but this should not delay applications where there are unauthorised Deprivations.
- The Law Society will issue new case law guidance relating to what constitutes a DoL.

Local

- The action plan will continue to be implemented.

- Options to incorporate the additional work and potential new ways of working will be explored and considered at Adult Care Management Team and the Adult Board.
- The Local Executive Committee (Safeguarding Adults) will continue to be informed of progress against the action plan.
- Consideration of the requirements for Quality Assurance of the whole process.
- Consideration of the requirements for ensuring that Mental Health Assessors meet eligibility requirements and the quality of their assessment is satisfactory.
- Close contact is being maintained with regional Councils and NHS partners with the aim of confirming both regional pressures and identifying efficient methods of demand management and emerging best practice.
- The responsibility for ensuring that s.12 doctors have the required indemnity and Disclosure and Barring Scheme clearance in place is no longer being administered regionally on behalf of the Department of Health. Discussions are in progress across the region to establish the most efficient and effective way of carrying out this function.

RESOLVED that:-

1. The content of the report, the implications of the judgement and the requirement for additional work to be carried out be noted.
2. Cabinet agrees to receive a further report on progress against the work plan at the Cabinet meeting to be held on 12th February 2015.
3. Reasons for the Decision
To keep Cabinet informed of progress with respect to the related plan of work.
4. Alternative Options Considered and Rejected
None
5. Declared (Cabinet Member) Conflicts of Interest
None
6. Details of any Dispensations
N/A

7. Date and Time by which Call In must be executed

Midnight on Friday, 17th October 2014

Proper Officer
13 October 2014