

AGENDA ITEM

REPORT TO CABINET

12 FEBRUARY 2015

**REPORT OF CORPORATE
MANAGEMENT TEAM**

CABINET DECISION

Adult Services and Health - Lead Cabinet Member- Councillor Cllr. Jim Beall

Mental Capacity Act Deprivation of Liberty Safeguards update

1. Summary

A report to Cabinet in October 2014 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. This report provides an update on operational activity and financial projections for 2015-16.

2. Recommendations

- That Cabinet notes the content of the report, the implications of the judgement and the requirement for additional work to be carried out.
- That Cabinet agrees to receive regular updates on progress against the operational plan, with the next update planned for October 2015.
- That Cabinet notes the requirement for 'one off' funding of £450,000 to be considered as part of the Medium Term Financial Plan.

3. Reasons for the Recommendations/Decision(s)

To keep Cabinet informed of progress with respect to the related plan of work.

4. Members' Interests

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

Disclosable Pecuniary Interests

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code)

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3. DETAIL

3.1 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 has been a radical change to the legal definition of and the test for Deprivation of Liberty (DoL), which must now be followed.

3.2 There are 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?

3.3 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 have been put in place by the State.

The Safeguards

3.4 As outlined in the previous Cabinet report, a much greater number of existing and potential clients are now considered within the scope of the Safeguards, including the current care home population and people living in supported living, both within and outside the Borough, who are Stockton residents and who are aged 16 or over. These clients require assessments for mental capacity as the first stage in the process.

- 3.5 Following the mental capacity assessment, if it is determined that the person is incapacitated, additional assessments are then carried out to determine whether a deprivation of liberty is in place and that any restrictions are proportionate and in the client's best interests.
- 3.6 Clients with mental health problems and / or a learning disability who are resident in, or assessed as needing care in, a hospital facility and would previously have been considered as 'informal' admissions, need to be assessed for a Deprivation of Liberty Authorisation or for detention under the Mental Health Act.

The work programme and resource implications

- 3.7 Following an initial scoping exercise, a work programme is in progress to ensure that current clients are not unlawfully deprived of their liberty. Working practices have also been reviewed to ensure that the new test is embedded in practice and risks to vulnerable clients and the Council are mitigated as far as is reasonably practicable.
- 3.8 Client assessments are being prioritised by client group and care and support arrangements. It has been recognised that the additional work resulting from the Supreme Court Judgement is creating workload pressures across Adult Services and the 0-25 team. The following dedicated staffing resource is in place until the end of March 2015, with the expectation that this resource will continue to be required for the full 2015/2016 financial year in order to meet demand.
- 1 WTE Commissioning manager to oversee the administrative function of the Safeguards
 - 2 WTE x Senior Administrators to administer each application for authorisation of a DoL
 - 3 WTE Best Interest Assessors
- A project Manager has also been appointed until 31 March 2016 in order to support the Deprivation of Liberty Safeguards function and develop a sustainable process, which will incorporate monitoring and quality assurance requirements. An additional 3 WTE Social Workers are also being recruited so that the required 3-monthly (minimum) care-management reviews for all clients subject to a DoL authorisation are completed. This is to ensure that the authorisation continues to be needed, and that it is the least restrictive way of providing the care and support. The need for additional legal staff resource is also being considered. The additional staff resource needs to be in place until 31.3.16 in the first instance to enable monitoring and review to inform substantive arrangements.
- 3.11 It was acknowledged in the previous Cabinet report that there are additional direct costs relating to:
- Payments to Mental Health Act s.12 approved doctors, who are commissioned to carry out the required mental capacity assessments for clients.
 - Payments to Independent Mental Capacity Advocates (IMCAs)
 - Court of Protection applications for clients living in supported living arrangements. These costs are associated with the application, the hearing and the mental capacity assessment.
- 3.12 Please see the Appendix to this report, which provides details of the costs for 2014-15 and the projected costs for 2015-16.

3.13 Next Steps

Local

- The action plan will continue to be implemented.
- Options to incorporate the additional work and potential new ways of working are being explored and will be considered at Adult Care Management Team and the Adult Board in due course.
- The Local Executive Committee (Safeguarding Adults) will continue to be informed of progress against the action plan.
- The Local Safeguarding Children's Board will continue to receive updates on the elements of the operational plan that relate to young people aged between 16 and 18 years.
- Consideration of the requirements for Quality Assurance of the whole process will be incorporated into the operational plan.

4.0 FINANCIAL IMPLICATIONS

- 4.1 An element will be funded from the Children, Education and Social Care managed surplus and the remaining £450,000 will be considered as part of the Medium Term Financial Plan, which will be presented at the next Cabinet meeting.

5.0 LEGAL IMPLICATIONS

- 5.1 It is a legal requirement for the Council to adopt the 'new test' for Deprivation of Liberty following the Supreme Court Judgement.

6.0 RISK ASSESSMENT

- 6.1 The Council's Risk Register has been updated.

7.0 SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

- 7.1 Health and wellbeing: the work programme will promote the Best Interests of vulnerable Stockton residents.

8.0 EQUALITIES IMPACT ASSESSMENT

Not applicable.

Name of Contact Officer: Liz Hanley
Post Title: Adult Services Lead
Telephone No. 01642 527055
Email Address: liz.hanley@stockton.gov.uk

Education related? No

Background Papers

Ward(s) and Ward Councillors: Not ward specific

Property (<http://sbcintranet/library/64521/RES/Capital.doc?view=Display>)

APPENDIX

DoLS Resource Requirement	Rationale	Actual Costs to 30.12.2014	Projected Costs 2014-2015	Projected Budget 2015-2016
1.0. Whole Time Equivalent (WTE) Project Lead (June to September 2014)	<ul style="list-style-type: none"> To support managing authorities (care providers) in submitting requests for authorisation of DoL (this post is now a Project Manager: please see below). 	13000	13000	0
0.8. WTE Project Manager	<ul style="list-style-type: none"> To develop a sustainable process for the administration and monitoring of the Deprivation of Liberty Safeguards. 	0	6,000	30,000
1.0.WTE Commissioning Manager	<ul style="list-style-type: none"> To oversee the administration function, including the Standard authorisation process. 	2,000	11,000	38,000
2.0 WTE Project Administrators	<ul style="list-style-type: none"> To administer the DoLS function. There have been 46 urgent authorisation requests for DoL since the team's implementation in December 2014 	2,000	15,000	54,000
3.0. WTE Best Interest Assessors (BIA)	<ul style="list-style-type: none"> To provide additional capacity for the completion of Best Interest Assessments (the existing BIA rota is delivered by Social Workers and Occupational Therapists) There have been 243 authorisation requests for DoL in 2014/2015 to date. 	44,000	79,000	124,000
3.0. WTE Care Managers	<ul style="list-style-type: none"> to complete (minimum 3-monthly) reviews for clients subject to a DoL authorisation 266 existing authorisations are being referred to Care Management teams, equating to 1064 extra reviews annually. Approximately 940 clients in Stockton care homes may require an authorisation of DoL. When all the assessments are completed, it is expected that there may be in excess of 1500 authorisations in place in Stockton. This equates to 6000 reviews per year. The initial resource requirement of 3.0. WTE Care Managers has been identified in the first instance, with a plan to review in the second half of the financial year 2015-16. 	0	10,000	124,000
Section 12 approved doctors	<ul style="list-style-type: none"> To complete the required 3 assessments for each application for authorisation of DoL. Assessment cost of £173 per client, plus travel costs. 	69,000	103,000	160,000
Court of Protection (CoP) applications	<ul style="list-style-type: none"> There are currently approximately 17 adult clients in supported living, and 15 young people (aged 16-18 years) identified by care managers as requiring consideration for authorisation of DoL. The minimum cost of a CoP application is £400 	0	0	13,000
Best Interest Assessor Training	<ul style="list-style-type: none"> The proposed plan for 2015/2016 is to train an additional 18 existing Social workers as BIAs. All qualified BIAs must, by law, complete annual refresher training. 	0	7,000	17,000
Signatory Time (Service Managers & Adult Services Lead)	<ul style="list-style-type: none"> To consider the authorisation of the applications for authorisation of DoL Each signatory dedicates a minimum of 0.5 days weekly, within existing resources 	0	0	0
Additional Signatory Resource	<ul style="list-style-type: none"> To support the Signatory function (currently 4 hours per week). 		1,000	6,000
Misc costs: postage, ICT and stationery	<ul style="list-style-type: none"> Between September and December 2014, approximately 560 large letters were sent by 1st Class post and approximately 149 by 2nd Class mail. Four desktop computers have been installed. 	2,000	2,000	2,000
Total expenditure in Year		132,000	247,000	568,000
<i>Less Managed Surplus brought forward</i>			<i>100,000</i>	
<i>Less Managed Surplus CESC In Year</i>			<i>85,000</i>	
<i>Less other Income</i>			<i>62,000</i>	<i>32,000</i>
Net Cost Per Year		132,000		536,000