

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

1 DECEMBER 2016

**REPORT OF ADULT
SERVICES AND HEALTH
SELECT COMMITTEE**

CABINET DECISION

Lead Cabinet Member - Adult Services and Health – Councillor Jim Beall

SCRUTINY REVIEW OF THE MENTAL CAPACITY ACT DEPRIVATION OF LIBERTY SAFEGUARDS (DoLS)

1. Summary

The attached report presents the outcomes of the Adult Services and Health Select Committee's review of Deprivation of Liberty Safeguards. There has been a significant increase in activity to implement the Mental Capacity Act MCA DoLS following the 'Cheshire West' Supreme Court judgment in 2014. This judgment led to workforce and financial pressures for Adult Social Care across the country.

The review was instituted in order to review the Council's response and has focussed on the Council's responsibilities and functions in relation to DoLS and reviewing the application of DoLS in the wider health and care community.

2. Recommendations

1. The work of Adult Services in responding to the requirements of the MCA/DoLS be noted and commended;
2. The work undertaken to ensure
 - a) effective partnership working and;
 - b) that processes are as streamlined as possible (within the requirements of the MCA), be commended, and future work be supported;
3. Subject to the Medium Term Financial Planning Process, the Committee supports the identification of a sustainable resource allocation to support the DoLS function;
4. A full update report be submitted to Adult Services and Health Select Committee after 6 months, once the funding arrangements have been clarified, and current improvement projects have been completed.

3. Reasons for the Recommendation(s)/Decision(s)

The report presents the findings of the scrutiny review that took place as part of the agreed work programme for 2016-17.

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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1 DECEMBER 2016

**REPORT OF ADULT SERVICES AND
HEALTH SELECT COMMITTEE**

CABINET DECISION

**SCRUTINY REVIEW OF THE MENTAL CAPACITY ACT DEPRIVATION OF LIBERTY
SAFEGUARDS (DoLS)**

SUMMARY

The attached report presents the outcomes of the Adult Services and Health Select Committee's review of Deprivation of Liberty Safeguards. The review was instituted in order to review the Council's response and has focussed on considering the Council's responsibilities and functions in relation to DoLS and reviewing the application of DoLS in the wider health and care community.

RECOMMENDATIONS

1. The work of Adult Services in responding to the requirements of the MCA/DoLS be noted and commended;
2. The work undertaken to ensure:
 - a) effective partnership working and;
 - b) that processes are as streamlined as possible (within the requirements of the MCA), be commended, and future work be supported;
3. Subject to the Medium Term Financial Planning Process, the Committee supports the identification of a sustainable resource allocation to support the DoLS function;
4. A full update report be submitted to Adult Services and Health Select Committee after 6 months, once the funding arrangements have been clarified, and current improvement projects have been completed.

DETAIL

1. The attached report outlines the findings of the review of Mental Capacity Act Deprivation of Liberty Safeguards (DoLS). The review was undertaken by Adult Services and Health Select Committee.
2. Following consideration by Cabinet, an action plan will be submitted to the Select Committee setting out how approved recommendations will be implemented detailing officers responsible for action and timescales.

COMMUNITY IMPACT IMPLICATIONS

3. The review does not propose any changes to policies or service delivery.
4. Liberty is fundamentally a human rights issue, and the Right to Liberty and Security is covered by Article 5 of the European Convention on Human Rights. Public Authorities must act to:
 - Deter conduct that would breach human rights
 - Prevent human rights breaches – including protecting individuals from the actions of others
 - Respond to human rights breaches, which may include carrying out an investigation
5. Under the Human Rights Act, public authorities have positive obligations to promote and protect human rights.
6. The Deprivation of Liberty Safeguards (DoLS) are an amendment to the Mental Capacity Act 2005, and set out the procedure that should be followed when it is deemed necessary to deprive a person of their liberty when they lack capacity to consent to their care, support and treatment. The DoLS relate to care put in place by the state and treatment in care homes and hospitals.
7. It was anticipated that the majority of people who will require the protection of the MCA DoLS are those people with more severe learning disabilities, older people with any of the range of dementias, or people with neurological conditions such as brain injuries. The MCA DoLS provide that deprivation of liberty:
 - should be avoided whenever possible;
 - should only be authorised in cases where it is in the relevant person’s best interests and the only way to keep them safe;
 - should be for as short a time as possible;
 - should only be for the purpose of care or treatment.

FINANCIAL IMPLICATIONS

8. The 2014 Supreme Court judgment led to a significant impact on the resources of Adult Services throughout the country.
9. Identification of a sustainable resource allocation to support DoLS functions has been supported by the Committee, and is covered in more detail in the separate report on the Council’s administration of DoLS that is being considered elsewhere on this meeting’s agenda.

LEGAL IMPLICATIONS

10. It is a legal requirement for the Council to undertake the relevant assessments in relation to the Deprivation of Liberty Safeguards.

RISK ASSESSMENT

11. This scrutiny review of DoLS is categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.

COUNCIL PLAN POLICY PRINCIPLES AND PRIORITIES

12. The review directly relates to the following Principles:
- Protecting the vulnerable through targeted intervention
 - Promoting equality of opportunity through targeted intervention.

CORPORATE PARENTING IMPLICATIONS

13. There are no direct implications in the report.

CONSULTATION INCLUDING WARD/COUNCILLORS

14. The review has been supported and informed by Adult Services. The Clinical Commissioning Group and Care Quality Commission have provided the views of NHS commissioners and the regulator respectively. North Tees and Hartlepool, and Tees Esk Wear Valleys NHS Foundation Trusts attended meetings as examples of Managing Authorities in the NHS, and all Care and Nursing Homes in the Borough were surveyed for their views.
15. Two site visits to the DoLS Administration Team at Queensway House have taken place.
16. The Cabinet Member for Adult Services and Health was consulted on the findings and recommendations.

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Education related? No

Background Papers None

Ward(s) and Ward Councillors: N/a

Property

N/a