Stockton-on-Tees
BOROUGH COUNCIL

Big plans, bright future

Review of Mental Capacity Act / Deprivation of Liberty Safeguards (DoLS)

Adult Services and Health Select Committee

Final Report

November 2016

Adult Services and Health Select Committee
Stockton-on-Tees Borough Council
Municipal Buildings
Church Road
Stockton-on-Tees
TS18 1LD

Contents

	Page
Select Committee Membership and Acknowledgements	**4**
Foreword	**5**
Original Brief	**6**
1.0 Executive Summary	**7**
2.0 Introduction	**9**
3.0 Background	**9**
4.0 Findings and Recommendations	**13**
5.0 Conclusion	**21**

Select Committee membership

Councillor Mohammed Javed (Chair)
Councillor Lisa Grainge (Vice Chair)

Councillor Bailey
Councillor Cunningham
Councillor Faulks
Councillor Hall
Councillor Houghton
Councillor Mitchell
Councillor Walmsley

Acknowledgements

The Committee would like to thank the following people for contributing to its work:

Liz Hanley, Assistant Director (Social Care), Stockton Council (SBC)
Natalie Shaw, Project Manager – Deprivation of Liberty Safeguards, SBC
Angela Connor, Service Manager, Adult Services, SBC
Katie Tucker, Care Quality Commission
Rachel Ann Down, Tees Esk and Wear Valleys, NHS Foundation Trust
Stuart Harper-Reynolds, North Tees and Hartlepool NHS Foundation Trust
Lindsey Robertson, NTH Trust
Barbara Potter, Hartlepool and Stockton-on-Tees Clinical Commissioning Group

With thanks to all those care homes that responded to the Committee's survey.

Contact Officer

Peter Mennear, Scrutiny Officer
Tel: 01642 528957
E-mail: peter.mennear@stockton.gov.uk

Foreword

XXXX

Councillor Mohammed Javed
Chair

Councillor Lisa Grainge
Vice Chair

Original Brief

Which of our strategic corporate objectives does this topic address? The Council Plan 2016-19 section on Adults includes: Key Outcome - Enhancing the quality of life for people with care and support needs. Key Objectives - Ensuring that people have a positive experience of care and support - Safeguarding adults at risk of abuse or neglect Key Activities - Ensure that duties under the Mental Capacity Act (MCA) are discharged effectively, including administration of the Deprivation of Liberty Safeguards (DoLS)
What are the main issues and overall aim of this review? There has been a significant increase in activity to implement the MCA DoLS following a Supreme Court judgment in 2014, leading to workforce pressures across Adult services. As the MCA relates to people from 16 years, there are also implications for Children's services. It is proposed that the review focuses on: - overviewing the application of the Mental Capacity Act with specific reference to DoLS in Stockton Borough - considering the Council's responsibilities and functions in relation to DoLS - reviewing the application of the MCA/DoLS in the wider health and care community including 'Managing Authorities', which include care home and NHS providers (i.e all state funded care), and commissioners. Additional funding to support the Council's DoLS function is in place for 2016-17, but substantive funding needs to be determined. Improvement work is in progress to inform this work. A separate update report is scheduled for Cabinet in November 2016.
The Committee will undertake the following key lines of enquiry: What are the MCA and Deprivation of Liberty Safeguards? What are the Council's responsibilities? What are the responsibilities of the wider health and care sector? What are the resource implications? How are DoLS applied in local health and care settings? What does good practice look like locally? What needs to improve? What is the role of the CQC relating to application of DoLS? What do inspection results tell us?

Executive Summary

1.1 This report presents the outcomes of the Adult Services and Health Select Committee's review of Mental Capacity Act Deprivation of Liberty Safeguards (DoLS).

1.2 Correct application of the DoLS is necessary in order to ensure that people are not being unlawfully deprived of their liberty, and their care and support arrangements are in their best interests.

1.3 There has been a significant increase in activity to implement the MCA DoLS following a Supreme Court judgment in 2014, leading to workforce pressures across Adult services.

1.4 The aim of the review was to:

- understand the Council's responsibilities and functions in relation to DoLS;
- consider how the Council has responded to the increased workload;
- review the application of the MCA/DoLS in the wider health and care community.

1.5 It is widely recognised that Councils are under pressure to undertake the increase in workload following the Supreme Court Judgment. Nationally, there was a tenfold increase in applications between 2013-14 and 2014-15. In 2015-16, the total number of applications received by Local Authorities reached 195,840

1.6 Following the Supreme Court judgment, approximately 900 clients in Stockton were identified as receiving care and support where a DoL would need to be considered. Due to the pressure on resources available for assessments, there remains a 'backlog' of clients to be assessed, but this number has reduced over time. The Council is taking a risk-based, managed approach to the assessment of those clients it is aware of for whom a DoL may apply, but have not yet been assessed. Priority has been given to those in 24hour dementia, mental health and learning disability care, and the most restrictive packages in the community. New referrals from Managing Authorities, and 'renewals' must continue to be dealt with as and when they are received.

1.7 The Committee found that Stockton's response has been effective in implementing the requirements of DoLS, and local Managing Authorities are appreciative of the Council's support.

1.8 The resource demands have been substantial for all Supervisory and Managing Authorities. Interim arrangements at Stockton include the creation of a dedicated DoLS Administration Team and have proven to be effective to date, but a sustainable longer term resource allocation needs to be found.

1.9 Improvement work has been undertaken during 2016 in order to better understand the ongoing resource requirement. A separate report is scheduled for Cabinet in December 2016 in order to consider those issues, and this review is intended to complement that work.

1.10 The Committee recommends that:

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.

Introduction

2.1 This report presents the outcomes of the Adult Services and Health Select Committee's review of Mental Capacity Act Deprivation of Liberty Safeguards (DoLS). This took place during municipal year 2016-17.

2.2 There has been a significant increase in activity to implement the MCA DoLS following a Supreme Court judgment in 2014, leading to workforce pressures across Adult services. As the MCA relates to people from 16 years, there are also implications for Children's services.

2.3 The aim of the review was to:

- understand the Council's responsibilities and functions in relation to DoLS
- consider how the Council has responded to the increased workload
- review the application of the MCA/DoLS in the wider health and care community including 'Managing Authorities', which include care home and NHS providers (i.e all care put in place by the State), and commissioners.

2.4 Additional funding to support the Council's DoLS function is in place for 2016-17, but substantive funding needs to be determined. Improvement work has been undertaken during 2016 in order to better understand the ongoing resource requirement. A separate report is scheduled for Cabinet in December 2016 in order to consider those issues, and this review is intended to complement that work.

2.5 During its review the Committee held a number of meetings to gather evidence from Adult Services, the Care Quality Commission, Clinical Commissioning Group, North Tees and Hartlepool NHS Foundation Trust, and Tees Esk and Wear Valleys NHS Foundation Trust.

2.6 A survey of local care homes was undertaken, and Members of the Committee visited the DoLS Administration Team Office.

Background

3.1 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 (ECHR).

3.2 All those who work in public authorities, whether devising policy or procedures or delivering services directly to the public, must act in a way that is compatible with the ECHR.

3.3 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

3.4 Under the Human Rights Act, public authorities have positive obligations to promote and protect human rights.

3.5 Article 5 of the ECHR states that 'everyone has the right to liberty and security of person. No one should be deprived of his or her liberty [unless] in accordance with a procedure prescribed in law.'

3.6 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. Deprivations in community settings must be authorised by the Court of Protection.

3.7 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.

3.8 There was a major change in the interpretation of the DoLS legislation following a Supreme Court judgment in March 2014 (the 'Cheshire West' case). The judgment clarified that the 'acid test' of whether a person is deprived of their liberty was that they must lack the capacity to consent to their care and support arrangements, and:

- be subject to continuous supervision and control;
- not be free to leave.

3.9 The following are not relevant when determining a case:

- the person's compliance or lack of objection to the care arrangements;
- the relative normality of the placement (ie. each person's circumstances must be considered on an individual basis);
- the reason or purpose behind a placement.

3.10 This has significantly expanded the range of people to which a Deprivation of Liberty (DoL) may apply.

DoLS Process

3.11 The onus is on providers of care (known as Managing Authorities) to identify when they believe clients need to be deprived of their liberty to receive the required care, support

and treatement, and then to make an application to the relevant Supervisory Body for a standard authorisation. In addition, social workers, and family members may also make applications.

3.12 As a 'Supervisory Body', the Council is responsible for considering applications for a Deprivation of Liberty (DoL), and authorising these when appropriate. The Council must ensure that appropriate assessments (the Safeguards) are undertaken to ensure that the proposed care plan is in the client's best interests and is the least restrictive option.

3.13 The process involves the arrangement of a number of assessments by Best Interests Assessors (BIAs) and doctors approved under the Mental Health Act. A Council signatory must then review the documentation and make a decision as to whether the authorisation should be granted. The process must be completed within 21 days where the request if for a standard authorisation. The assessments are outlined at Appendix 1.

3.14 When a DoL authorisation is in place, regular monitoring of the care and support arrangements needs to be undertaken to ensure the DoL remains appropriate, and authorisations can be challenged at any time by the client or their representatives. A DoL can be in place for up to 12 months, at which point it would need to be renewed.

3.15 Urgent authorisations can be put in place by Managing Authorities if they believe it is necessary to deprive someone of their liberty immediately. The Managing Authority must apply for a standard authorisation at the same time, and the relevant assessments must be completed within 7 days.

3.16 The role of Relevant Person's Representative (RPR) is usually fulfilled by family or friends but RPRs may be appointed via a commissioned arrangement by the Council if no appropriate family member or friend can be identified. Their role is to be consulted at key points in the process, and informed on all matters relating to the relevant person's care and treatment. They should be appointed as soon as possible following a standard authorisation being given. In Stockton, 90% of RPRs are family or friends, and 10% are commissioned.

3.17 More information on the role of Relevant Person's Representative is available at:

https://www.stockton.gov.uk/adult-services/safeguarding-adults/the-deprivation-of-liberty-safeguards-dols/

3.18 Each DoLS authorisation is only applicable to the care setting for which it is granted. An authorisation of DoL cannot therefore be transferred with the person to a new care home or hospital. The DoLS process must still be completed to the DoLS signatory stage in cases where an application for authorisation of DoL has been made and where any of the assessments have been completed, even if the person has moved/been discharged from the setting before all assessments are completed (or where all assessments have been completed but the person moves/is discharged before scrutiny by the DoLS signatory). In these cases, an authorisation decision of "not granted" would be made by the DoLS signatory.

3.19 It is good practice for a DoL authorisation to be in place to cover any respite care that may take place in a 12 month period, rather than having to complete an authorisation for each respite stay.

3.20 In addition to arranging completion of assessments, signatory duties and reviews as outlined above, the Council must ensure a range of activities take place including written communication of decisions to clients, the appointment of Relevant Person's Representatives (RPRs), maintenance of records, producing returns for NHS Digital (previously the Health and Social Care Information Centre), and dealing with queries from Managing Authorities.

Findings

The National and Local Impact

4.1 It is widely recognised that Councils are under pressure to process the increase in workload following the Supreme Court Judgment. Nationally, there was a tenfold increase in applications between 2013-14 and 2014-15.

4.2 In 2015-16, the total number of applications received by Local Authorities reached 195,840. This compared to 137,540 in the year before. 105,555 were processed in 2015-16 and of these 73% were approved.

4.3 The CQC noted that 49% of applications in that year were Urgent Authorisations, and there was also an upward trend in the number of challenges made by people to whom the applications related.

4.4 The Committee found that there is variation between regions. The North East Local Authorities receive the highest number of applications at 900 per 100,000 adults. London has a rate of 319 per 100,000 and other regions received between 400 and 500 applications per 100,000 adults.

4.5 Our region also has the highest rate of completed applications; this is 665 per 100,000 adults compared to the next highest at 258. The proportion granted is relatively similar across England, althought 86% are granted in North East and London compared to 44% in the South West (NHS Digital).

4.6 The Committee found that the high number of applications being approved in the North East suggested that the applications made were appropriate, and the North East ADASS region considered it was applying DoLS appropriately. Additional regional performance work has been commissioned to look into this further.

4.7 The CQC noted in its annual review of the application of DoLS that discussions with the Association of Directors of Adult Social Services (ADASS) and the Local Government Association (LGA) had highlighted the challenges in responding to applications, re-assessing clients with authorisations that had expired where necessary, and appointing representatives such as RPRs and Independent Mental Capacity Advocates (IMCAs).

4.8 The national impact has been reflected locally. Following the Supreme Court judgment, approximately 900 clients in Stockton were identified as receiving care and support where a DoL would need to be considered. Due to the pressure on resources available (including the availability of relevant assessors e.g. Best Interests Assessors), there remains a ‘backlog’ of clients to be assessed, but this number has reduced over time.

4.9 The Council is taking a risk-based, managed approach to the assessment of those clients it is aware of for whom a DoL may apply, but have not yet been assessed. Priority has been given to those in 24hour dementia, mental health and learning disability care, and the most restrictive packages in the community. New referrals from

Managing Authorities, and ‘renewals’ must continue dealt with as and when they are received.

4.10 There were 1699 applications for authorisation of DoL for the year 2015/2016 (an increase of 56% on the previous year). Of these, 1384 (82%) were granted.

4.11 The impact of the Supreme Court Judgment on local authorities has not been recognised as a ‘new burden’ by Government and therefore has not led to provision of significant additional resources.

4.12 The Law Commission is reviewing the legal framework around the DoLS and this may enable a simplification of the system, but any changes would not be in place until 2020 at the earliest, and initial proposals to change practice do not indicate any reduction in resource requirements.

4.13 In the interim, the Care Quality Commission (CQC) states that DoLS should continue to be applied following current legislation, and it should be as positive an experience as possible, including through the addition of conditions to authorisations were appropriate (e.g. to increase opportunities for supervised access to the community for a person in a care home).

Stockton Council Response

4.14 Adult Services has established a dedicated DoLS Administration Team. The DoLS Team is made up of 3.3 Full Time Equivalent staff. The Team administer the DoLS process including the necessary record keeping, receipt of applications, arranging of assessments, co-ordinating the return of completed assessments to allow scrutiny by the DoLS signatories, and communication with clients and families/relevant person’s representatives. A Project Manager has been in post since February 2015.

4.15 Prior to the establishment of the dedicated DoLS Administration Team, the Adult Strategy Team Commissioners were having to consider DoLS applications in addition to other duties. This was no longer tenable or appropriate given the significant increase in DoLS referrals since 2014.

4.16 Signatories are designated senior managers who scrutinise and sign off the DoLS authorisation decision and this is the final stage in the process. Adult Service managers are on a rota to undertake this duty, and in addition a part time dedicated resource has been added to the team for 12 hours per week to support Service Managers.

4.17 The Committee noted that the Council has received one additional grant of £90k from Central Government since the Supreme Court Judgment, but this was on a non-recurrent basis and funded a very limited amount of the additional DoLS related activity. Interim resources of £546k had been identified by the Council for 2016-17, but a pressing issue for the Council is to ensure that the relevant funding and resources are in place to meet the Council’s legal duties on an ongoing basis.

4.18 The Council was taking a managed approach for those clients it was aware of but had not yet assessed, in line with the ADASS Priority Tool. Initially there was a social worker-led exercise to scope the number of clients that DoLS may be applicable to. The outstanding assessments are being processed, the Team is in contact with Care Homes and the onus is now on Care Homes to update the Team on any change to a client's arrangements.

4.19 There is recognition that it has not been possible to assess all clients by now, due to the length of process and shortage of key staff including Best Interest Assessors.

4.20 A number of internal social workers and occupational therapists are trained BIAs, however once assessments have been allocated to these BIAs, and where clients are deprived of liberty in "in-house" provision, external assessors must be used. Additional social workers have been trained to become BIAs and this has increased the capacity of the internal rota.

4.21 If clients are active to a psychiatrist, that doctor is responsible for completing the relevant Mental Health and Capacity Assessments. If not, assessors are accessed through a database at a direct cost to the Council. Liaison with Tees Esk and Wear Valleys Trust Trust (TEWV) has been undertaken to consider the options available to commission these psychiatrist assessments.

4.22 The Council also has to consider DoLS applications for those placed outside of the Borough.

4.23 The Personalisation Peer Review in January reported that the Council appeared to be compliant with the requirements of the MCA DoLS, and noted that the 'Local authority providing essential and compliant support to care providers (MCA/DoLS)' was a strength.

4.24 TEWV Trust is a member of the Regional DoLS Implementation Group, and agreed that SBC appeared to have proper procedures in place. North Tees and Hartlepool Trust (NTH) stated that they have good relationships with both Stockton and Hartlepool DoLS Teams.

4.25 The Quality Standards Framework (QSF) is the Council's system for consistently assessing and evaluating the quality, efficiency and overall performance of the providers Adult Services commissions. The Committee has monitored its development over time and the QSF now includes criteria focussing on the operation of DoLS.

Work of the DoLS Team

4.26 A range of improvement work has been undertaken following the establishment of the dedicated DoLS Administration Team. This enabled greater understanding of the scope of the team's work and supports the case for a discrete team to oversee the process for the Council. The review led to a number of improvements including closer working with Managing Authorities to obtain signatures for appointment to RPRs, and development of a checklist for managing authorities. This work had seen some early improvements against a range of metrics; for example, reduced time taken to process

an application through to decision, and a reduction in number of Managing Authorities submitting forms containing errors.

4.27 Further improvement events during 2016-17 were undertaken to look at the BIA assessment process, and DoL care management processes. A smaller-scale project has looked at postal arrangements given the substantial volumes of post generated by the process.

4.28 Members undertook two site visits to the DoLS Administration Team based in Queensway House to gain greater insight into its work. Members were impressed with the manner in which the Team had responded to the challenge of administering the Council's increasing workload. Of particular note was the development of a bespoke database to track each DoLS application ans this was seen as being of great benefit to the Team's work.

4.29 Members suggested improvements to the operational needs of the DoLS team including greater office space, improved equipment such as the fax machine, and increased access to printers. These have forwarded been to the Service Area for further consideration. The use of electronic signatures by DoLS Signatories to reduce delays was also suggested and the Committee noted that this option was being explored.

Coroner Involvement

4.30 The Chief Coroner has stated that all deaths of people subject to a DoL authorisation at the time of their death will be treated as a death in state detention. This means that the Coroner's Office must be informed by the Managing Authority of the death, and the police must also visit the relevant care setting to take details. Locally, the Police will also arrange for transportation of the deceased person to the mortuary. The Coroner's Office should contact the next of kin and outline the steps that would follow; the relevant person's body would be released once the Coroner has completed their investigation.

4.31 The Tees Coroner has decided that it should be informed of each death, and will decide if further examination of the person's records on a case by case basis.

4.32 The Committee fully recognises that this may lead to additional distress and concern at a difficult time. It is therefore crucial that Friends and Family of those subject to a Deprivation of Liberty are made fully aware of the implications when the initial application is made, and that end of life arrangements are handled sensitively.

Friends and Family Feedback

4.33 The DoLS Team has produced a survey to gather feedback on the DoLS process from Friends and Family.

4.34 Feedback from the period November 2015 to October 2016 can be summarised as follows:

- The number of respondents who said that staff at the care setting spoke to them before the DoLS were used was 77% (208 out of 270)
- The number who said they felt involved in the process was 86% (232 out of 270)
- The number who said that they had a positive or very positive experience of the DoLS was 74 % (200 out of 270)
- The number who said they had a neutral experience was 14% (38 out of 270)
- The number who said they had a poor or very poor experience was 7% (18 out of 270) – 5% did not provide a response to this question.

4.35 The DoLS Team has found that the questionnaire provides Family and Friends with the opportunity to provide feedback and to raise any concerns directly with it. Where concerns have been raised, these are dealt with immediately either by the DoLS Team, or will be escalated to the Service Manager where appropriate. Some of the comments received relate to the DoLS process in general, rather than specific local processes.

4.36 The Team also use the feedback from the questionnaires to highlight to the Managing Authorities, the importance of involving families. Feedback from relatives has also led to improved information being provided, for example the implication of a death when a DoLS authorisation is in place.

Care Quality Commission

4.37 The correct application of the DoLS is a key priority for the Care Quality Commission. The national backlog and reasons for it are recognised, and the key issue for CQC is to ensure such cases were monitored effectively. A key issue for CQC was to ensure people knew that they could challenge DoL decisions, and that legal aid was available for this.

4.38 Nationally the levels of practice and awareness amongst providers is variable and this is reflected locally. The issue is consistently mentioned in CQC inspection reports (both positive and negative). CQC look to establish if staff members are aware of the MCA, and when to apply the 'acid test'.

4.39 CQC inspection reports focus on five key areas. They outline whether care is: safe; effective; caring; responsive; well led. References to the application of the DoLS are included in the 'Effective' domain. The following are examples of extracts from reports on local care homes, published over the previous year, to provide an indication as to the type of issues inspectors check. (Any issues outlined below that may need addressing would be picked up by the action planning/enforcement process which takes place following an inspection.)

4.40 A care home that was rated Good for Effectiveness of Care:

'At the time of our inspection six people were subject to DoLS authorisations. This was clearly recorded people's care plans, along with details of when the authorisation would expire and any conditions attached. This meant the service was effectively monitoring people's rights under the DoLS process. People who lacked capacity had care plans in place setting out how they could be assisted with their decision making, including details of

decisions made in their best interests and multi-disciplinary team meetings to discuss this. This was in keeping with the principles of the Mental Capacity Act.'

4.41 A care home that was found to Require Improvement for Effectiveness of Care:

'From our discussion with the manager we found that despite making telephone calls asking when the authorisations applied for would be completed they had not proactively dealt with the matter so had not used urgent authorisation in respect of the continued deprivation these people were experiencing. […] No record had previously been kept of when the DoLS expired and it was difficult to find the documentation as this was not stored in the care records.

We checked whether the staff understanding of who was subject to a DoLS authorisation and whether any conditions on these authorisations were being met. The staff we spoke with were unsure as to who had a DoLS authorisation in place and believed that an application meant the authorisation was agreed, which is not the case'

The area manager told us that they recognised the manager and staff needed more support to ensure they fully understood and applied the requirements of the MCA.'

4.42 A care home that was found to be Inadequate for Effectiveness of Care:

'On the first day we found that the folders where the DoLS information were stored were chaotic and it was impossible to readily determine who had an authorised DoLS in place. There were applications and authorisations in the folder for people who were no longer using the service and no evidence to show when or how the applications were being pursued. The majority of applications were sent mid 2015 but not as yet authorised. No consideration had been given to the fact that staff practices were depriving people of the liberty and until a DoLS authorisation was in place this was illegal. This was no different from what we had found in the July 2015 inspection.
[…]
Again staff were not aware that people had the right to challenge DoLS authorisations at the Court of Protection and therefore did not enable people to get representation.'

4.43 In its national annual review of MCA/DoLS 2014-15, CQC committed to a number of actions including: clearly defining what 'good' looks like in relation to DoLS; continuing to use inspections and reports to encourage improvements in practice; continuing to challenge providers if they are not meeting legislative requirements, which may include taking enforcement action.

4.44 The 2014-15 report highlighted variation in the quality of DoLS implementation across the country. The 2015-16 report noted that variation was still apparent, but that there was evidence of improvement amongst providers that have been re-inspected.

4.45 The report highlights that it had found that where it had found good practice it could be summarised as follows:

- improvement among providers upon re-inspection;
- a culture of person-centred care;
- robust policies and documentation of DoLS procedures (and the wider MCA);

- good leadership.

4.46 Continuing variation and poor practice could be summarised as follows:

- variations in levels of staff training and understanding;
- variable practice in how capacity assessments and best interests decision-making are carried out and documented;
- variable practice in the management of applications for authorisation to deprive a person of their liberty.

Clinical Commissioning Group (CCG)

4.47 The CCG as commissioner expects to see evidence from providers it commissions that they are operating within the requirements of the MCA, and a reporting system is being developed to supplement the regular meetings that take place. Monthly reporting information is requested from the commissioned Foundation Trusts in relation to training and compliance with DoLS processes. Any identified issues are discussed with providers in the CCG's Clinical Quality Review Group meetings.

4.48 The CCG also has a legal responsibility to ensure compliance with the MCA in relation to those living in the community with a Continuing Health Care Package. It recognises that it needs to undertake a substantial work programme to ensure people in the community with packages commissioned by the NHS have authorisations in place where applicable. Legal advice is being taken and best practice sought from other CCGs.

4.49 Separately, the Council is reviewing approximately 300 cases in the community where a deprivation may apply, and applications to the Court of Protection are being supported by the Legal Team.

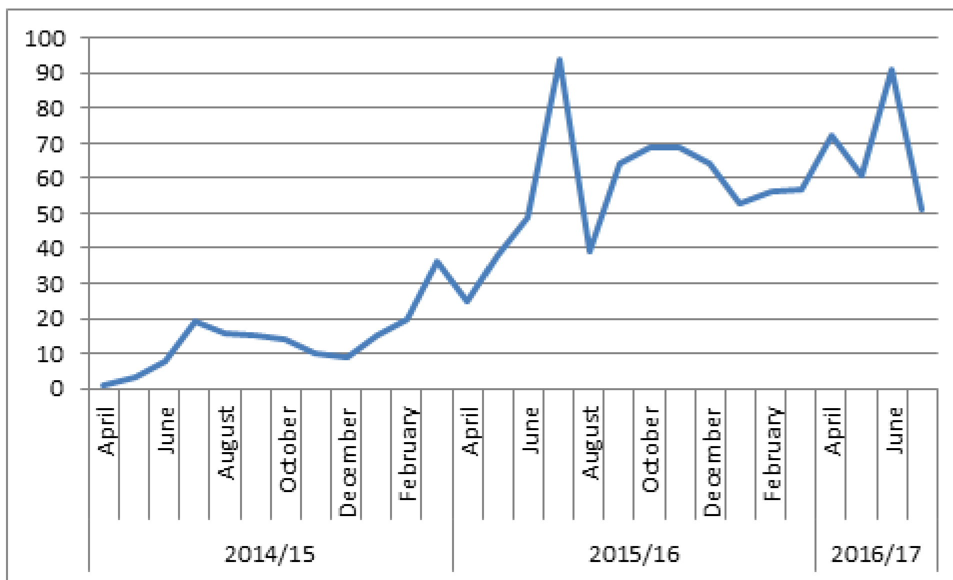
Tees, Esk and Wear Valleys (TEWV) NHS Foundation Trust

4.50 The Committee found that TEWV Trust has seen DoL authorisations in place but mainly in community and respite settings, and there are relatively few overall; most patients in in-patient care would be treated under the separate Mental Health Act if necessary.

4.51 Staff had been kept up to date with relevant training and information, and use the national referral form. The Trust had not identified any significant issues, apart from ensuring the acid test was correctly applied. Current work was focussing on how the Trust demonstrated compliance and evidenced ongoing work.

North Tees and Hartlepool (NTH) NHS Foundation Trust

4.52 North Tees and Hartlepool Foundation Trust has seen steadily increasing numbers of DoLS applications. Applications during 2015-16 have been significantly higher with 688 compared to 166 in 2014-2015; this increase is in line with NHS organisations locally and nationally. The following shows the trends over the previous two years:



4.53 The Trust has worked with staff to raise awareness of understanding patient capacity (including when it can appear to change due to a patient's fluctuating conditions, for example delirium in the early stages of dementia), inclusion of DoLS status on handover records, and 3 times a week Trust-wide checks on the DoLS status of patients within in-patient care.

4.54 An initial review of improvement opportunities between the Trust and Council had suggested that processes are working well. The Council also supports Trust Safeguarding Champion sessions.

Care and Nursing Homes

4.55 Local care homes, and care homes with nursing, were surveyed during the review to seek their views on how they are implementing the DoLS requirements and what support they needed.

4.56 The results of the survey are included in the report at Appendix 2.

4.57 Responses outline that providers have faced a significant extra workload through DoLS, particularly through the need to complete the relevant administrative paperwork. There is recognition of the limited scope for amending administrative procedures due to the prescribed nature of the process.

4.58 Each setting should have a named contact for each client, usually a Deputy Manager or Manager. The survey showed that senior staff are taking the lead on this work in terms of arranging applications, for example, but there is also the continual need for awareness-raising and training amongst all staff. Twelve care settings (out of 55) were represented in the survey responses and all outlined the training in place for all their staff.

4.59 Quarterly training sessions are offered by the Team to the local care sector. Overall, as demonstrated in the survey responses, training and the general advice and guidance as provided by the DoLS Team is recognised and appreciated by providers.

4.60 The DoLS Team has noted that over time the quality of referrals from Managing Authorities including care homes has improved and there are fewer omissions in the paperwork. Generally, there is a perception that initial issues following the 2014 judgment have been resolved, and that administration within the local health and care sector is improving.

4.61 However, CQC reports continue to identify areas for improvement in practice within local providers and the DoLS Team have noted, for example, some of the larger homes have struggled to keep track of DoLS authorisations in place and the need to trigger a review at the end of the 12 month period. The assessment process has also identified that some clients did have capacity, and so DoLS did not apply in those cases.

Conclusion

5.1 The Committee has found that the workload associated with MCA DoLS has increased significantly since the Judgment in March 2014. This has had an impact on Local Authorities across the country and Stockton has been no exception.

5.2 Correct application of the DoLS is necessary in order to ensure that people are not being unlawfully deprived of their liberty, and their care and support arrangements are in their best interests.

5.3 The Committee found that Stockton's response has been effective in implementing the requirements of DoLS, and local Managing Authorities are appreciative of the Council's support.

5.4 The resource demands have been substantial for all Supervisory and Managing Authorities. Interim arrangements at Stockton have proven to be effective to date, but a sustainable longer term resource allocation needs to be found.

Appendices

Appendix 1

Assessment Process

The MCA DoLS set out clear guidelines on when someone can be deprived of their liberty.

1. It must be to provide a specific treatment or care plan that is in the person's best interests.

2. Doctors or care professionals must be satisfied that there is no suitable alternative care plan that would not deprive the person of their liberty.

3. The managing authority (the hospital or care home where the person is staying) must apply to its supervisory body (the local authority responsible for the hospital or care home) for authorisation of the Deprivation of Liberty.

4. The supervisory body must conduct six assessments to confirm that deprivation of liberty is lawful and appropriate:

   1. Age assessment: to check whether the person is aged 18 or over

   2. Mental health assessment: to check whether the person being deprived of liberty is suffering from a mental disorder within the meaning of the Mental Health Act 1983.

   3. Mental capacity assessment:to confirm whether the person being deprived of liberty lacks capacity to consent to the arrangements made for their care and treatment

   4. Best interests assessment: firstly to establish whether the proposed care plan would deprive the person of their liberty, and secondly to confirm whether it is:
      • in the best interests of the person to be subject to the authorisation
      • necessary in order to prevent them from coming to harm
      • a proportionate response to the likelihood of them suffering harm and the seriousness of that harm.

   5. Eligibility assessment:to confirm whether the person is eligible to be deprived of liberty under the MCA DoLS

   6. No refusals assessment: to ensure that the proposed treatment does not conflict with a valid decision already made by an attorney or deputy on the person's behalf, or with a decision made in advance by the relevant person themselves

Appendix 2

Care Home and Care Home with Nursing Survey Responses

1. Please provide a brief overview of the impact and workload for your Home related to DoLS following the Supreme Court judgment in 2014	
A	It takes considerable time to complete the forms, have discussions with residents and their relatives and send the forms to the council and for us it makes no difference to the care provided so seems like an extra burden. We also have to notify CQC of all DoLS applications and this involves more time and effort. Also we have to keep records of applications, which residents have them and when they are expiring etc. It's a lot of extra work.
B	It has caused a big impact as we have to continually make staff aware and update knowledge and understanding of the DoLS process although the majority of the work is completed by the manager or seniors in managers absence.
C	There has been a significant impact on workload mainly relating to documentation . Much of this has occurred due to conflicting and varying information received from different sources along with changes in requirements
D	The workload on the home has been quite demanding at times. It is sometimes difficult to keep a track of when DoLS are due to expire and to submit a form 2. Social workers can arrange admissions to the home and inform staff MUST put a DoLS in place however there have been a few occasions when I have felt this has not been warranted and despite my concerns have been instructed to put an urgent request in anyway and on each of these occasions they have come back as rejected anyway. This causes unnecessary time, paperwork and added work load. Home manager should be able to make the decision once an assessment has been carried out upon admission.
E	The workload has definitely increased as any resident that comes in who requires a DoL authorisation needs to have the paperwork completed and sent urgently to get the urgent and the standard authorisation. There were a lot of residents that required the authorisations when it was first implemented but we were asked to concentrate on the new admissions initially. We sent the list of the residents that were already in the care home and these are still awaiting the authorizations as the DoLS team could not cope with all the workload. There has been a financial impact as well. The hours have increased for the staff filling the forms and attending training. Initially the CQC were very concerned about the authorisations not processed but the care home clarified that the requirements from us were done, the delay was from the SBC. *[Note from Adult Services: In relation to the reference to the DoLS Team not been able to cope [with the demand], the reason that residents will still be part of the managed approach is because those residents at greatest risk and in greatest need of the protection of the DoLS have been/are being processed first (in line with the ADASS*

	priority tool) – the system as a whole would not be able to process all of the managed approach along with the urgent authorisations/further standard authorisations.] There was a lot of confusion initially in understanding the terminology and explaining to the staff and residents' families. The 'death in state detention' and coroner involvement and the transport of the body etc were, and are still a concern for many.
F	Massive increase in workload. Training, completing applications, reviews, assessments etc.
G	The process of completing Urgent, Standard and Extension forms for DoLS applications and engaging in BIA/Section 12 Doctors assessments, and now completing review documents/care planning, has significantly increased the workload of nursing staff, especially when the initial DoLS is often only for a period of 3 months. *[Note from Adult Services: Shorter authorisations are used where, for example, an objection has been noted, where a period of settlement may be needed following a new placement, or where the person's situation is likely to change. Following the improvement work for the DoLS BIA process, it was agreed that the recommended length of authorisation where there was a potential challenge to the authorisation, would be six months.]*
H	• Due to […] having a high turnover of clients, when clients are admitted from Hospital we do not know them, or have an insight into their past medical history or Mental Health needs. • We have a procedure in place, when clients are discharged. • It has increased our workload, but we are aware of the importance of completing documentation as soon as possible
I	Since the judgment the work load increased initially, especially when there was a bulk of applications to process. As a home we have now become quite efficient at completing the forms without error and it has rolled into regular workload resulting in it being considerably less time consuming.
J	The impact and the workload has not had too much impact on either the home or my role as the Manager as all the information needed is available.
K	Prior to the judgment there was no one accessing short breaks at […] or living at […] Residential Care Home that was subject to a DoLS authorisation (I was not in post then). Since the judgment we now have needed to identify those people who are currently accessing the service who are assessed as lacking in the capacity to consent to their care with us and are deemed to be deprived of their liberty whilst staying with us. This resulted in 41 applications for people who subsequently now have a DoLS authorisation in place at […] Short Breaks and 4 out of the 5 living at [the Care Home]. The greatest impact on workload is for […] Short Breaks due to the numbers of people who access the service. We must ensure that we receive the correct information around a person's capacity to consent to their care from Social Workers on the initial referral and also that we then ensure we have authorisations in place.

2. What have been the main issues for the Home in applying DoLS requirements?	
A	It's purely the time take doing the documentation, the care given does not really change. Most of our residents are completely unaffected by the DoLS process and it has little effect on them. However when people die it causes considerable stress and upset to the families which I feel is unnecessary.
B	I personally have not had any issues with applying for DoLS.
C	Time, ensuring that requirements are met within seemingly different goals/strategies.
D	Problems can occur when a service user dies whilst a DoLS is in place. I do often find that police are not very helpful or demonstrate any sympathy or empathy and can 'accuse' staff of tampering with a body even though they have just carried out their job with care and compassion. Families are often unable to enter the room to see their loved one prior to police attendance and there is often a very long time period before police can arrive and then a further waiting period for the body to be removed. This causes a lot of distress to family and staff and on occasion other service users. Acceptance of an application via email would be beneficial and maybe signed copies could be sent out in the post as if there is a problem with fax machines etc this can delay the process from the care home's point of view. *[Note from Adult Services: We encourage applications by email, and explain to managing authorities that signatures can follow in the post or by fax if they cannot be scanned and emailed. The process therefore should not be delayed from the care home's side of things.]*
E	The main issues were understanding the terminology, the actual procedures to get authorisation and the time-frames, the filling of correct forms. The forms were being amended too often and, as with every new procedure, there were teething problems. There were no problems in the care that was provided as codes on doors, cot sides, pressure mats etc were already in place. It was just a matter of getting authorisation for them.
F	Delays in DoLS being processed by local authorities. Due to the way they are prioritized? Don't understand how this is scaled, and CQC then chase us for not having the DoLS in place. *[Note from Adult Services: There has been a prioritisation of the assessments for clients identified within our "managed approach" as a result of the Supreme Court ruling. This has been communicated to our managing authorities and the ADASS priority tool has been shared so information about those clients to be considered within the managed approach can be reviewed regularly. Where a person's situation has changed, we ask that the managing authority grants itself an urgent authorisation, requesting a standard authorisation at the same time. We have made CQC aware of our*

	position.]
G	i. Rarely able to complete applications prior to admission of a new resident increasing workload on admission. ii. Handing out information to relatives/RPRs. iii. Distress to families relating to Police/Coroner at end of life.
H	Sometimes we apply for DoL authorisations and due to the short period of stay the client is discharged before DoLS has been granted Again not knowing the client well enough to determine if a DoLS is needed
I	At the beginning understanding the process and the time factors involved in applying for the DoLS. Another was working to avoid errors on forms.
J	The only main issue is that some of the residents do not have any family members or a designated Care Manager so identifying an RPR has been a little time consuming.
K	As an in-house [*SBC]* provider all assessments must rightly be undertaken by external, independent BIA/MHA which have proven difficult to coordinate as the person is not living with us and therefore to get assessments undertaken when they are here has proven difficult to coordinate. Parents also struggle to understand why a DoLS is required when the person is living at home with them still. (Carers pack of information is provided prior to an application being made).
3. How has the Local Authority supported you to implement the DoLS requirements?	
A	They have provided training and information sessions. The staff are very helpful and always willing to talk and offer advice. We phone them when we have any queries and they are very good.
B	I personally cannot fault the support from the DoLS Team, they are always at the end of the phone for any questions and I feel they fully support us in the process of the applications and updates.
C	There have been some interesting training sessions but these did not seem to be held frequently. Sometimes difficult to get hold of staff to clarify any queries
D	E mails are often sent to remind us that a form 2 is required, this helps but maybe they could be sent a little sooner as they are only being sent once the submission date has passed. I realize this is the responsibility of the home however as described in question one this is purely down to time and added workload. *[Note from Adult Services: Reminder emails for submission of Form 2 are not sent once the deadline has passed. These will be sent between approximately 2 weeks before the authorisation end date (otherwise there would be the risk of an unlawful deprivation).*

	We would send an email where we hadn't already received the Form 2 (which we request approximately 3-4 weeks before the end of the authorisation).]
E	The local authority (DoLS Team) has been very supportive and has provided training to understand the system. They have been efficient in processing [urgent authorisations] and alerting us of our shortfalls etc. They are very helpful and friendly over the phone when we make inquiries.
F	Send out email to inform us of change of process/legislation, provided training sessions.
G	SBC provided initial training for care homes prior to implementation of DoLS, and staff are available for help/advice via telephone. Other Local Authorities that we deal with are not as organised/helpful.
H	All Managers and Support Co-ordinators have received training on the requirement of applying for DoLS, also we are aware that we can ring the DoLS team if we require any further advice.
I	We have been invited to Kaizen events around the DoLs process where we received great support and a better understanding. We maintain regular correspondence with the DoLS Team who keep us regularly updated.
J	Yes, Stockton Borough Council and in particular [*name of Social Worker]* has been most supportive.
K	The local authority have supported me extremely well when we initially identified how many applications would be required for existing people accessing short breaks. We met and set up a plan as to how best to manage the numbers and assessments to ensure it was well managed and coordinated. The DoLS team are very supportive and always willing to offer advice as and when required. They also attended one of my Carers groups to talk about their role and answer any questions carers had. They offer regular update sessions for staff involved in the DoLS process.
4. How does the manager ensure the care home staff demonstrate the required competencies, including how training needs are identified and addressed?	
A	All staff have done training on the DoLS process but only key staff ie:- manager and deputy are involved with the actual workload. This means that these key staff are trained and competent and hopefully streamlines the process for us as a home.
B	All staff have training and the manager speaks to senior staff and has examples and scenarios for them.
C	DoLS training is part of mandatory training. There has been attendance by staff at SBC training, e-learning and face to face training.

D	Through regular supervision and appraisals. Regular training in safeguarding and the mental capacity act. Home manager also holds training sessions with senior staff on how to implement a DoLS and with all care staff so they understand the tenets of DoLS and carrying out the competencies.
E	The competency for filling the forms and obtaining authorisations is limited to a director, manager and the admin staff. However all care staff have been trained on the understanding of DoLS, carrying out DoLS requirements, understanding procedure to follow when death occurs of person with DoLS authorisation. The training is reviewed at a supervision and if any training is due it is organised. We either arrange bespoke training if a lot of staff are due at the same time or we book on line courses.
F	Through supervisions, appraisals, PDP's etc
G	All staff receive DoLS training. Care file audits include DoLS paperwork. Information/guidance file available for nursing staff with recent memos.
H	Duty Managers complete the DoLS documentation All Care Support staff have been given dates in October 2016 to attend mandatory DoLS training to enable all staff to gain an understanding of the DoLS requirements.
I	Through regular supervision and observations. Passing on what we have learnt onto senior staff members who, once competent have been dealing with DoLS applications effectively.
J	All staff attend training on MCA and DoLS and are involved when the assessments are carried out.
K	All staff undertake Mental Capacity training as a mandatory requirement, they now can access this and DoLS training via the e-learning route. We discuss at team meetings to ensure all staff understand their responsibilities. As the Manager of the services I have also been supported in attending the BIA course at Northumbria University which I commenced in October 2016, this is over and above what is required in my role but I expressed an interest in having a greater depth of knowledge in this area to support the Local Authority whilst also being able to provide that knowledge and skill to my staff team.
5. Do you have any suggestions for improvement in relation to how the requirements of DoLS are managed within Stockton Borough?	
A	I don't think there's much we could change. The forms have been amended. There should be a way to rescind a DoLS when, for example, someone is on the end of life care pathway but I know this is not possible. Personally I feel the whole DoLS system has gone too far the other way with too many people being subject to DoLS because the acid test is far too wide

	and encompasses so many people for whom its completely irrelevant. However its government legislation so I'm not sure what we can do about that. It probably is more relevant for people in different settings ie: mental health. *[Note from Adult Services: It should be noted that in such cases it is more likely that the Mental Health Act would be used.]*
B	I feel they are managed very well by the team and cannot fault them.
C	Link person with easy access Additional training Clear directions for different situations Regular visits to home
D	Reducing the 3 month review has helped reduced pressure on care home staff and manager as this reduces time and work load. Care home staff and the manager cares for service users 24/7 and realizes the importance of informing DoLS team if there are any changes to the DoLS status of a person at any time. When a service user with a DoLS in place reaches 'end of life' care, it would be useful if a review of needs could be held and the DoLS removed as this will reduce the problems stated in question 2. Whilst we understand the protocol for a 'death in state detention' is appropriate [...] is it really necessary for someone who has been put on an 'end of life' care pathway to remain on a DoLS and the problems mentioned in question 2 to continue.
E	Training to be more local and not too often. I think too much emphasis is being given to secure emails. The secure web email required a password change every so often. gscx emails and passwords etc. I think too much time is being wasted in unnecessary admin work when it could be focussed elsewhere. Has there been any incident to warrant this? My personal opinion is that for one incident so much work is generated nationally that it does not make sense. Also please don't change addresses, telephone numbers or staff for these teams because it will affect a lot of our policies and displayed information and it will be very time consuming to change them again. *[Note from Adult Services: We have provided our policies and procedures document for implementation of the DoLS, with our contact details.]*
F	The RPR forms are given back to us to get families to sign and return. Thought this could be done by the assessors during the process. *[Note from Adult Services: This change was introduced as a result of the improvement event for the DoLS administration process. BIAs are asked, wherever possible, that this signature is obtained at the point of assessment. However, it is not always possible for the BIA to see the person recommended to be appointed, in person. The new process*

	has resulted in significant improvements in the time taken for the RPR signature to be returned, meaning that the relevant person has a representative in place sooner.]
G	No suggestions
H	No suggestions. All Managers have a better understanding now of the DoLS requirements, although at first was daunting process.
I	No suggestions but I could highly recommend other care homes to be involved in future Kaizen events with the DoLS team as this has been extremely beneficial to our care home.
J	No I think that Stockton Borough Council do this most appropriately.
K	There are frequently differing views around having DoLS in place for people who are accessing short breaks as they do not live here. CQC at my last inspection (2015) felt that parents should apply for Court of Protection / Lasting Power of Attorney for Health & Welfare and then 'discharge' that duty of care to myself whilst the person was accessing short breaks (which may only be for 1 night per month). A recent IMCA also was of the same opinion. Perhaps this could be looked into further but I do not feel it would reduce numbers or workload but perhaps move that back to social workers who are already struggling with caseloads. *[Note from Adult Services: these applications for short breaks have been processed following clarification from legal services. In order for a person to be deprived of their liberty, the case law from the European Court of Human Rights is clear that the person must be confined to particular restricted place for a non-negligible period of time. The Law Society guidance on identifying deprivation of liberty states that restrictions (where a person is under complete supervision and control and not free to leave) lasting more than two to three days, will usually lead to a deprivation of liberty.]*