

Deprivation of Liberty Safeguards

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| Report authors: | Fiona Davis, Director of Safeguarding and Quality Assurance Giles Goodeve, Service Manager, Safeguarding and Quality Assurance |
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| 1. | Current DoLS backlog: |
| | <p>The context in Essex, as with other Local Authorities nationally, is that we have had difficulties with managing the backlog of cases previously and this is further challenged by the circumstances we are currently facing with COVID-19. These challenges relate to volume of cases and delays associated with completing the assessment and authorisation process.</p> <p>The backlog in Essex has been steadily dropping with specific plans to manage and monitor this over the past 3 years. The currently backlog is 3614 as of 08.06.20.</p> <p>The primary route that ECC has used to manage the backlog is by using a contract we have with an external provider and in addition Independent Best Interest Assessors. This provider has supported Adult Social Care with a consistent number of cases over the past 2 years and we have used primarily to support reduction of the backlog.</p> <p>In January 2020 we agreed with the provider a plan to significantly increase the number of cases they would take on a monthly basis to bring down the backlog more quickly, which was due to commence in March. Due to the on-going pandemic we have had to place this plan on hold as these cases involve access to care homes who have been unable to accommodate these requests in order to manage the safety of residents and staff. We are in discussions with the provider to resume them taking cases when the impact of COVID-19 on care homes is at a suitable level for the adults and assessors.</p> |
| 2. | COVID-19: |
| | <p>Unlike the Care Act, the Mental Capacity Act 2005 (MCA) – (and the related Deprivation of Liberty Safeguards (DoLS)) was not amended by the emergency Coronavirus Act which went through Parliament in the week beginning 23 March 2020. However, the Government has released guidance on applying the MCA and DoLS during the pandemic. This means that the Deprivation of Liberty Safeguards (DoLS) remain in place in their current form, mental capacity assessments and best interest duties remain.</p> <p>The guidance emphasised that alternative ways of undertaking assessments should be utilised where possible (video technology etc) and</p> |

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| | <p>that the Supervisory Body (the Local Authority) should make every effort to ensure peoples human rights are not impacted.</p> <p>Essex County Council is experiencing difficulties with completing our MCA/DOLS work, only in as much as this relates specifically to the national social distancing measures and not to any other action Essex has taken in relation to the legislation. This is particularly in respect of the most vulnerable people who are not able to participate in the assessment process via technology as the outcomes would be unreliable, and where care homes are unwilling, or unable, to facilitate assessments due to COVID 19 cases, or where the adults fall into the groups of individuals who the Government instructed to self-isolate.</p> <p>Adult Social Care in Essex has responded to the pandemic situation by agreeing an approach to the triage of all new cases received since the pandemic period commenced. This involves assessing all new cases and for those triaged as priority and these fall into 3 categories:</p> <ul style="list-style-type: none"> • Urgent assessments in very specific cases that cannot be undertaken using any other methods may require a visit. (N.B. Essex has now agreed to progress trialling the use of video assessments as per the national guidance, but this wasn't in place at the start of the pandemic period and is always considered prior to any face to face visit). • Cases which are progressed through a process of undertaking equivalent assessment (through reviewing all relevant records and discussions with all relevant parties); and • Cases that are put on hold as the assessment can be delayed. <p>The central MCA and DoLS Team are continuing to monitor all cases through discussion with providers with a focus on welfare, best interests and managing the risks to individual adults.</p> |
| <p>3.</p> | <p>Liberty Protection Safeguards:</p> |
| | <p>The Liberty Protection Safeguards legislation was passed into law in May 2019. The new Liberty Protection Safeguards (LPS) is due to come into force in October 2020 via the Mental Capacity (Amendment) Act 2019. The LPS will replace the Deprivation of Liberty Safeguards (DoLS) as the system to lawfully deprive somebody of their liberty. The legislation will create Responsible Bodies to authorise an incapacitated person's deprivation of liberty. The identity of the Responsible Body will depend entirely upon the arrangements for the person's care which could be:</p> <ul style="list-style-type: none"> • An NHS Trust or Local Health Board if the person is being cared for in the hospital, or • A CCG or Local Health Board for arrangements under NHS CHC, or • A Local Authority in all other situations, such as care homes, supported living and private hospitals. |

The Council has already undertaken key actions in preparation for the new legislation including:

1. Set up an internal / external implementation group.
2. Identified the task and finish groups required to support implementation.
3. Ensured leadership level awareness and understanding of the new legislative changes.

The Government indicated in 2019 that the two new Codes of Practice would be released in spring 2020. This would have left very limited time to ensure each organisation was ready. The current crisis situation has meant that the Codes of Practice have not been published, meaning Councils and other Responsible Bodies are unable to undertake the key planning required to implement the new legislation. There is currently no further indication from the Government on the implementation timings of the Liberty Protection Safeguards. We await an update on any potential timing changes to implementation which will affect how we plan for any new date.