

**OFFICER DELEGATION SCHEME
RECORD OF DECISION**



TO BE UPLOADED TO THE INTERNET BY DEMOCRATIC SERVICES

Date: March 2023	Ref No: 2149
Responsible Officer: Paul Carr	
Type of Decision (please refer to MO Guidance):	
Key <input type="checkbox"/>	Non-Key <input checked="" type="checkbox"/>
Freedom of Information Status: <i>(can the report go in the public domain)</i>	
Yes	
Title/Subject matter:	
Deprivation of Liberty (DoLS) Team - Change of Establishment – additional DoLS Co-ordinator Post.	
Budget/Strategy/Policy/Compliance:	
(i) Is the decision within an Approved Budget?	Yes
(ii) Is the decision in conflict with the council's policies, strategies or relevant service plans?	no
(iii) Does the decision amend existing or raise new policy issues?	no
(iv) Is the decision significant and/or does it meet the £100,000 threshold for recording?	no

<p>Equality Impact Assessment</p> <p>[Does this decision change policy, procedure or working practice or negatively impact on a group of people? If yes – complete EIA and summarise issues identified and recommendations – forward EIA to Corporate HR]</p>	<p>No - it will have a positive impact on adults with care and support needs, who lack mental capacity to consent to residing in 24 hour care, or who are receiving such a degree of care and support in the community, which amounts to them being under continuous supervision and control and not free to leave, as defined in the Deprivation of Liberty Safeguards Legislation (DoLS). DoLS is a statutory function of the Council under the Mental Capacity Act (2005).</p>
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Background

The Mental Capacity Act **Deprivation of Liberty Safeguards** came into force on 1 April 2009.

The safeguards are in response to the 2004 European Court of Human Rights judgement involving an autistic man who lacked capacity, who was kept at Bournemouth Hospital by doctors against the wishes of his carers. The court found that he had been deprived of his liberty unlawfully, and the Department of Health committed to introducing new legislation to close the 'Bournemouth Gap'.

These safeguards provide protection for a very vulnerable group of people who are cared for in hospitals or in care homes registered under the Care Standards Act 2000, in circumstances that deprive them of their liberty, and who are unable to consent (but who are not detained under the Mental Health Act 1983).

The safeguards are designed to protect the interests of an extremely vulnerable group of service users and to:

- ensure people can be given the care they need in the least restrictive regimes
- prevent arbitrary decisions that deprive vulnerable people of their liberty
- provide safeguards for vulnerable people
- provide them with rights of challenge against unlawful detention
- avoid unnecessary bureaucracy

The Council (which for this purpose is known as a Supervisory Body) has a duty to:

- assess any person for whom the Managing Authorities request a deprivation of liberty.
- authorise a deprivation if it is necessary and in the best interests of a person to whom the Safeguards apply.
- set any necessary conditions to make sure the person's care/treatment meets their needs in their best interests.
- appoint a Relevant Person's Representative (RPR)
- set a timescale for how long a deprivation can last.
- keep records of who is being deprived of their liberty.

The UK Government passed the Mental Capacity (Amendment) Act 2019, which extends to England and Wales, to replace DoLS with LPS.

- LPS is replacing DOLS
 - Mental Capacity (Amendment) Act 2019
 - Protection under Article 5 of the European Convention
 - Due for implementation – estimated winter 2023 (**delayed by Covid & other factors**)
- Rationale for change
 - DOLS is overly bureaucratic, resource-intensive, disproportionate to any benefits conferred
 - Safeguards are needed for all service users 16+ in all care settings, not just hospitals and care homes

The Liberty Protection Safeguards (LPS) will provide protection for people aged 16 and above who are, or who need to be, deprived of their liberty to enable their care or treatment, and lack the mental capacity to consent to their arrangements. People who might have a LPS authorisation include those with dementia, autism and learning disabilities who lack the relevant capacity.

LPS will replace an existing system (the Deprivation of Liberty Safeguards (DOLs)) and extend protections to more settings and people, including young people aged 16 and 17. Diverse sectors and professions will be called upon to successfully implement LPS, spanning local government, social care, and health.

DoLS Team - Current Situation

DoLS is a Statutory function for the council.

The current team comprises of two permanent DoLS Co-ordinators and one Team Manager. The team is reliant on 15 independent Best Interests assessors and 12 Independent Mental Health assessors to complete the required DoLS assessments.

It has been identified, via a demand and capacity audit completed December 2021 (appendix 1) that current demand outweighs staffing capacity

Demand outweighs staffing capacity: As part of a review of the team, by the previous head of service, a demand and capacity audit was undertaken (appendix 1), which clearly shows current demand outweighs staffing capacity;

During 2021/22 1260 DoLS applications were completed by the Supervisory Body. In addition, over 680 applications were received from acute hospitals and required to be triaged and monitored as per the ADASS guidance.

All DoLS applications have to be screened, guidance provided to referrers where required and then applications recorded onto a bespoke access database and the LAS system.

Cases need to be commissioned to independent Best Interests and Mental Health Assessors on a weekly and ad-hoc basis. In 2021/22 over 2.5 thousand assessments (Best Interests & Mental Health) had to be scrutinised and challenged where required, before the completion of the Standard Authorisation Document for presentation to the DoLS Signatories for authorisation.

Once authorised the team has to process all relevant documents, which involves a number of time-consuming activities, including input onto systems, notification to the Managing Authority and Care Co-Ordinators, with follow-up of any recommendations and appointment of a Relevant Person's Representative and referrals to the IMCA service.

As well as the above-mentioned activities, the team also complete the following tasks. (see also Appendix 1 for further breakdown).

- Screen all hospital cases for urgency, monitor and follow up.
- Complete DoLS Renewal Application prompts to Managing Authorities.
- Undertake NHS digital return records.
- Deal with issues regarding ordinary residence which is often complex work that requires support from legal services.
- Deliver training (half day x 6 per year at BALC) and ad-hoc to other services as required.
- Attend Care & Nursing Home and Supported Living forums to provide guidance and updates.
- Update bespoke database daily and record only on Protocol (LAS cannot be used as DoLS module is not fit for purpose).
- Monitor return of RPR acceptance and chase up where no confirmation received.
- Deal with enquires from care homes, families & social workers.
- Case discussions and advice to social workers/care co-ordinators including ICB.
- Case discussions and advice to 15 independent DoLS Best Interests Assessors.
- Section 21A challenge; case discussions with IMCA's - including instigation of part 9 reviews and liaison with legal team & social work teams for Court of Protection 21A challenge process.
- Advice/Guidance to practitioners and providers in relation to Community DoLS.

Currently, due to the workload described above, it is not possible for the 2 DoLS Co-ordinators to complete all of this work; the situation at present requires the team manager to assist on a daily basis (approximately 40% of manager work hours per week). Additionally, when a DoLS co-ordinator is on annual leave, flexi, sick leave etc., the team manager needs to block out her diary and complete work for the absent staff member, to avoid unauthorised deprivations of liberty and back-logs. This places additional pressure on the team, as management work is not completed during these periods, and the team have to keep up via accumulation of TOIL hours.

NB: as the team comprises of only 2 co-ordinators, for any time of absence, staffing is running at 50%. Whilst the team currently plan for and manage annual/flexi leave, this position would be untenable over any period of extended sick absence, resulting in potential non-compliance with statutory duties.

Implications of the Introduction of LPS

DoLS will be transitioning to Liberty Protection Safeguards following the introduction of new statute by the government (currently delayed – estimated winter 2023/24).

The introduction to LPS will result in an estimated 80-100% increase in cases requiring authorisation by the Local Authority; this is due to the fact that 'community

cases' (persons deprived in their own home, supported living etc.) who currently require authorisation by the Court of Protection, will come under the remit of the Local Authority for authorisation. 16 & 17 year old children will also require authorisation by the Local Authority under LPS.

The implementation of LPS will result in the need to further reconfigure the service to meet the new demands. The current DoLS team will need to be in a robust position, with sufficient trained staff in place, in order to expand further to meet the increased workloads brought by LPS.

Currently there is project work underway to support the introduction of LPS. This is being led by the Head of Adult Safeguarding, however support is required from the DoLS Team Manager. In the current situation, the Team Manager has minimal time to provide this support due to the requirement to cover the DoLS Co-ordinator work.

Additional areas for consideration

Unlike many Local Authorities, Bury currently has no back-log/waiting list of Standard Authorisations in care and nursing homes; this position will be difficult to maintain moving forward, with the current staffing levels. LPS will require that all back-logs of DoLS are cleared before implementation.

In preparation for LPS, selected social workers are being funded to complete specialist DoLS BIA training; these workers are approaching the DoLS team manager for support - requesting training, information, shadowing, in relation to DoLS work. At this time, only minimal support can be offered due to the work-load on the DoLS Team.

Awareness of MCA/DoLS/LPS is required to be raised amongst the Adult Care Services work-force. The DoLS team are already being approached by teams and agencies to provide support in this area; again, the team manager has minimal time available to provide this support, due to team work demands.

The DoLS Co-ordinator role in Bury is quite unusual, in that the co-ordinators provide all of the initial scrutiny of each case. Overall scrutiny and sign-off is ultimately provided by the DoLS signatory, however, the co-ordinators have a level of knowledge to complete scrutiny of assessments, query back to assessors and Managing Authorities where there are any issues, consider the requirements of conditions to support less restrictive options, recognise objection, and liaise with social work teams, IMCAs and the Managing Authority where required. The Standard Authorisation form 5s produced by the co-ordinators are completed to a degree where only final overall scrutiny and sign off is usually required. This lessens the work-load for senior management and contributes to the fact that Bury have no back-log of Standard Authorisations waiting sign off. The DoLS team needs to be a position where it has more than 2 co-ordinators in post and trained to this level, in readiness for further expansion once LPS is implemented.

Recommendation

- Establish additional grade 10/11 DoLS Co-ordinator Post for the DOLS/LPS service. (see appendix 2 for JD).

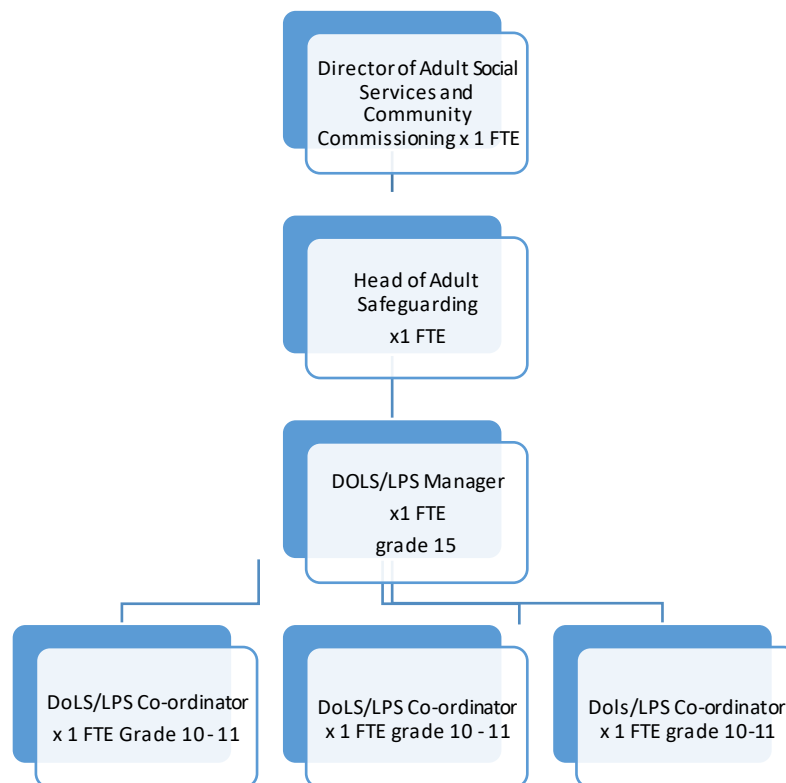
The cost of a grade 11 is £47,500. Table 1 below summarises the funding sources of the LPS/DoLs Co-ordinator.

Table 1 – Funding Source of LPS/DoLs Co-ordinator

OCO Directorate Budget Code	Budget Contribution (£)
SSG9400	1,200
SSG9403	24,300
SX40004	3,200
SSG9111	18,800
Total	47,500

- Carry out recruitment process as outlined below in line with council policies.

Suggested New Team Structure



Wards affected: All, this service covers the whole of Bury.		
Consultations:		
Scrutiny & Review Committee Interest:		
Options considered:		
Decision [with reasons]		
Decision made by:	Signature:	Date:
Director or Chief/Senior Officer		11 April 2023
S151 Officer		17/4/23
Director of People & Inclusion		25.04.2023
Members Consulted [see note 1 below]		
Cabinet Member		11 April 2023
Lead Member		25.04.2023
Opposition Spokesperson		

Notes

1. Where, in accordance with the requirements of the Officer Delegation Scheme, a Chief Officer consults with the appropriate Cabinet Member they must sign the form so as to confirm that they have been consulted and that they agree with the proposed action. The signature of the Opposition Spokesperson should be obtained if required, to confirm that he/she has been consulted. Please refer to the MO Guidance.
2. **This form must not be used for urgent decisions.**
3. Where there is any doubt, Corporate Directors should err on the side of caution and seek advice from the Council's Monitoring Officer.

Appendices



Appendix (1) Bury
DoLS Team Demand



Appendix (2) DoLS -
LPS Co-ordinator JC

