
**Cllr Simon Allen, Cabinet Member for WellBeing
Key Issues Briefing Note**

Wellbeing Policy Development & Scrutiny Panel – July 2014

1. PUBLIC ISSUES

Mental Capacity Act and the Recent Supreme Court Judgment

Background

The House of Lords published its Select Committee report on the Mental Capacity Act 2005 (MCA) on the 13 March 2014. Whilst acknowledging the wider Act as ‘visionary’ and fully endorsing its aspirations, the report concluded that it is still not well understood or embedded in practice across the health and social care sectors. The report asserts that this is due to a culture of ‘paternalism’ in health and one of ‘risk aversion’ in social care. The report goes on to make 39 recommendations for change, improvement and reform.

Of particular note is a recommendation to review and replace the Deprivation of Liberty Safeguards (DoLS) scheme, which was added to the MCA as an amendment in April 2009, as the scheme is ‘poorly drafted, overly complex, and bears no relationship to the language and ethos of the (wider) MCA’. In short, it is not fit for purpose’. Importantly, the report noted that ‘the evidence suggested that thousands, if not tens of thousands, of individuals are being deprived of their liberty without the protection of the law’. At the time of writing, the Government has yet to issue a formal response to the Committee’s recommendation on the DoLS scheme. The full Lords Select Committee report can be downloaded from:

<http://www.publications.parliament.uk/pa/ld201314/ldselect/ldmentalcap/139/139.pdf>

The Government published its response to the House of Lords Select Committee report in June 2014. In essence their report rejected a call for the establishment of a single body to oversee the implementation of the MCA, but is more positive about the creation of an MCA Advisory Board. The Government notes that the implications from the recent Supreme Court judgement (see below) are far reaching, and accepts the Lords’ assertion that better understanding of the purpose behind the safeguards is urgently required. The Government’s full response can be downloaded from: www.parliament.uk

On the 19 March 2014 the Supreme Court Judgment (P v Cheshire West & Chester Council, P & Q v Surrey CC [2014] UKSC 19) was handed down. In short, by way of the above Appeals, the Supreme Court was asked to define what is meant by ‘deprivation of liberty’ (for the purposes of engaging Article 5 of the European Convention on Human Rights) and to

consider whether the individuals cited in the case, were being cared for in a way that was depriving them of their liberty. All were judged to be subject to deprivation of their liberty, a ruling that overturned judgments made by the Court of Appeal.

The effect of the Supreme Court ruling is that the threshold for engaging Article 5 is now much lower, and so significantly more adults (18 and over) in care homes and hospitals, will be considered to be deprived of their liberty and will therefore come under the DoLS scheme and require assessments and possible authorisations.

In addition it was also held that a deprivation of liberty can occur in domestic settings where the 'State' is involved in such arrangements. This includes a placement in supported living accommodation, and even some foster care placements. For those adults, the Local Authority will have to make applications to the Court of Protection to make their placements lawful. However, it is highly unlikely that those living in ordinary family circumstances will be affected or those young people in residential children's homes or residential special schools. Note although the DoLS scheme applies to people aged 18 years and over the MCA applies to those who are 16 years and over.

Implications

Nationally, the effect of the Supreme Court Judgement is a predicted tenfold increase in DoLS applications for Care Homes and Hospitals to make and Councils to administer. This clearly has resourcing implications for the providers of affected care and support services, including in B&NES, Sirona Care & Health, the Royal United Hospital (RUH) and Avon and Wilshire Mental Health Partnership NHS Trust (AWP). It also has significant resourcing implications for the Council and, to a lesser extent, the Clinical Commissioning Group.

National Agency Responses to the Judgment

The CQC (Care Quality Commission), ADASS (Association of Directors of Adult Social Services), Department of Health (DH) and Ofsted provided advice notices promptly from the point the judgment was set out. ADASS and DH made a set of recommendations. These recommendations have been reflected in B&NES' local action planning.

In response to the financial implications the DH have stated there is no more money available to Councils or CCGs to manage this however they have appointed a lead and are developing a business case for the Treasury at the moment.

ADASS have convened a national MCA Steering Group and B&NES MCA/DOL lead is representing the South West as the regional lead for this national MCA Steering Group.

The steering group has met once to date and agreed the following four areas of work: (1) Finance – developing the business case for the Treasury; (2) Workforce Development – looking at BIA course, how to increase MHA capacity and IMCA services; (3) Process and Court of Protection – can this be streamlined to support providers, CCG and Councils and the Court itself; (4) Guidance development – to support all concerned.

Local Response to the Judgment

An action plan has been in place since March 14 and has been monitored and new items added as they have come to light by the local, multi-agency, Task and Finish group. Key actions include:

- gathering data on predicted need and demand;
- agreeing the prioritisation criteria for DOLS applications given all can't be processed; identifying the risk on all agencies risk registers;
- raising awareness amongst all relevant providers (guidance notes and workshops have been held, including a guidance note for carers and service users); and
- making the case for additional resources in 2014/15 ensure the Council is able to respond to its new statutory responsibilities.

2. PERFORMANCE

Carers Support Service

1270 new carers were added to the Carers Centre Register between the 1st of April 2013 and 31st of March 2014

Since the commencement of the Carers Support Service Contract 3523 carers have engaged with the service.

Age Range	At 31 st March 2014
5-17	419
18-24	161
25-34	126
35-44	281
45-54	495
55-64	463
65-74	410
75-84	346
85+	142
Unknown	242

The Carers Centre produces a quarterly newsletter which is distributed widely, including to health and social care providers. This has resulted in a 35% increase in circulation.

Between January 2013 and March 2014 805 carers aged 18 and over were helped to develop a personalised support plan.

The Carers Centre Annual Survey showed that 92% of carers felt that the Carers Centre listen to their needs and 82% said that the Centre was able to offer the help that they needed.

82% of carers reported that they felt valued as a carer, 64% felt less emotionally stressed and 69% felt more able to carry on caring following the support that they were provided with by the Carers Centre.

Domiciliary Care Performance Update (April 2014 – 15th July 2014)

Baseline data

There are four domiciliary care strategic partners under contract in B&NES and, at the time of reporting, four spot providers, plus a small number of 'one off agreements'. The contract with strategic partners is a framework agreement under which providers are paid quarterly in advance for a projected number of care hours they will deliver, then this amount is adjusted to reconcile with the actual number of care hours delivered.

During the reporting period the total number of care hours delivered by all contracted providers was between 4838 care hours (30th of April 2014 to 552 service users) and 4710 care hours (15th July 2014 to 445 service users).

The strategic partners are commissioned to accept the majority of all referrals for domiciliary care made by Sirona Care & Health as part of the statutory social care assessment and care management process. On the 15th July 2014 84% of all commissioned domiciliary care (3938) was being delivered by the strategic partners with the remaining 16% being delivered by either a contracted spot provider or commissioned under a 'one off agreement'.

Hours of Service Provided by Four Strategic Providers per Zone:

Zone	Number of Service Users	Number of Visits	Care Hours
Bath North	118	1254	932
Bath South	137	1576	1201
NES (Keynsham)	81	1102	800
NES (Norton Radstock)	109	1391	1005
	445	5323	3938

3. SERVICE DEVELOPMENT UPDATES

Integrated Reablement Expansion and Adult Social Care Pathway Redesign

The overarching aim of the expanded and extended integrated reablement service and the adult social care pathway redesign is to deliver an integrated service that will support and safeguard older and vulnerable people to remain independent through timely interventions that contain, stabilise, decrease and/or de-escalate emerging risks, care and support needs. This will involve a shift in focus and of resources to the 'front end' of the social care pathway to place greater emphasis on prevention and early intervention.

For those who appear to be in need of social care services, within the current eligibility framework, a short-term, intensive period of integrated reablement to reduce or delay the

need for a long term package of care and support will be offered. This significant expansion of the reablement service, which has been commissioned by the Council and is being provided by Sirona Care & Health working together with Domiciliary Care Partners, went live from 1st July 2014.

For those with the most complex needs the new adult social care service model will focus on in depth assessment, support planning and regular review to avoid the need for hospital/residential admission or escalation of need

In facilitating these fundamental changes in the adult social care pathway, the key objectives are to:

- Enhance opportunities for co-producing solutions with potential service users and carers
- Be explicit about the intended outcomes of interventions, placing a stronger emphasis on the achievement of independence
- Prioritise the development of enabling approaches, in the broadest sense, as well as specific service interventions to support recovery
- Challenge the assumption that services will always continue at the same level for relatively long periods of time
- Promote a culture within adult social care that engenders independence and community inclusion
- Empower people to remain in control of their own lives by extending self-directed support and direct payments

Dementia Friends: creating dementia friendly communities together

Dementia Friends is a national initiative that is being run by Alzheimer's Society. It's funded by the government and aims to improve people's understanding of dementia and its effects. Alzheimer's Society is working with lots of volunteers and other organisations to achieve this goal. Because, together, we can create dementia friendly communities.

A small cohort of B&NES staff and volunteers have trained as Dementia Friend Champions and are rolling out information sessions to both colleagues and members of the public. Via these sessions to date, another 66 people have signed up to become a Dementia Friend and each has pledged their support to help develop communities to become more dementia friendly.

Sessions are due to be held with Sirona Care & Health's Community Resource Centres (dates to be confirmed) and another session is planned to take place as part of the Wellbeing Festival at Green Park Station on Friday 18th July 2014. The festival runs from 11 am to 3.30 pm and the Dementia Friends session will take place at 2.00 pm for about an hour.

If anyone wants a session planned for their individual workplace, please contact Anne-Marie Stavert at: Anne-Marie_Stavert@bathnes.gov.uk or ring 01225 477941

4. Swimming Pool at Connections Day Centre, Writhlington

In response to the Wellbeing PDS Panel's specific question in relation to the cost of turning the outdoor swimming pool at the Connections Day Centre into a hydrotherapy pool, it can be confirmed that the pool at Connections Day Centre was not designed to be a hydrotherapy pool. It is estimated that it would cost £500,000 to turn the 1960s pool into a fit-for-purpose hydrotherapy pool. Given that the Council is not responsible for commissioning hydrotherapy services, the low use of the Connections Pool and the fact that there are hydrotherapy services already available in the area this would not be an appropriate use of Council funds.