

From: Clair Bell, Cabinet Member for Adult Social Care and Public Health
Richard Smith, Corporate Director Adult Social Care and Health

To: Adult Social Care Cabinet Committee – 17 November 2022

Subject: **DEPRIVATION OF LIBERTY SAFEGUARDS AND LIBERTY PROTECTION SAFEGUARDS**

Classification: Unrestricted

Past Pathway of report: None

Future Pathway of report: None

Electoral Division: All

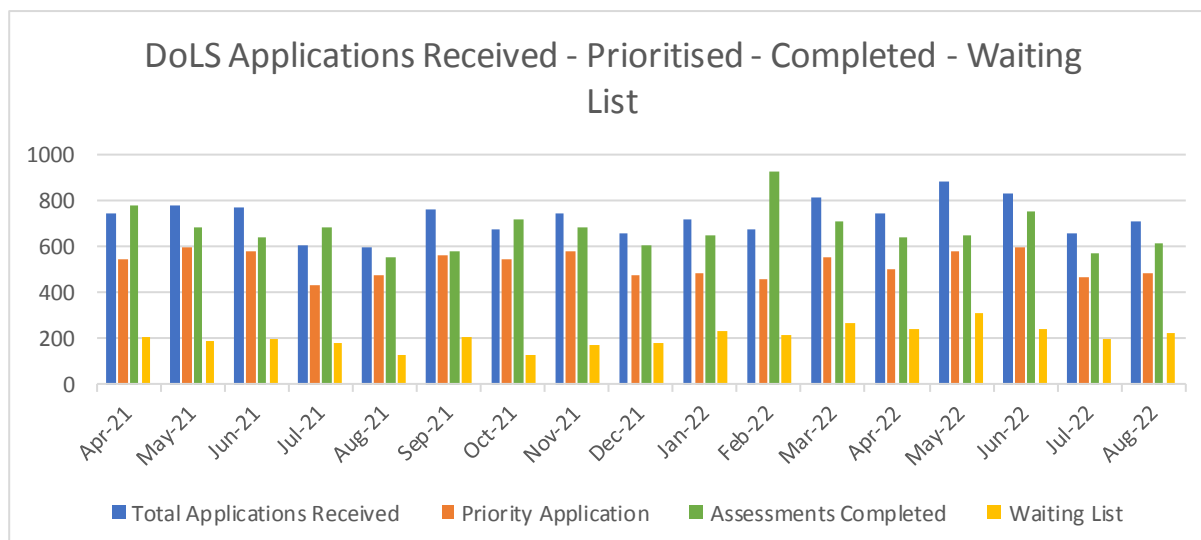
Summary This report provides an update on the Deprivation of Liberty Safeguards following the published data (August 2022) on NHS Digital and the challenge Kent faces with the rise in demand whilst the Authority awaits a further update on Liberty Protection Safeguards.

Recommendation(s) The Adult Social Care Cabinet Committee is asked to **NOTE** the content of the report.

1. Introduction

- 1.1 Deprivation of Liberty Safeguards (DOLS) is a statutory function of Local Authorities in England and Wales. Since the Cheshire West ruling in 2014, the number of DOLS applications received has increased to a point that local authorities do not have the resource to ensure that people affected are seen and safeguarded in a timely manner. Over the last 16 months Kent has seen a significant rise in DOLS applications. Originally the source of most applications was from hospitals, but there is also an increased demand from care homes.
- 1.2 Kent County Council (KCC), in line with other local authorities, uses the nationally agreed Association of Directors of Adult Social Services (ADASS) prioritisation tool to identify which DOLS applicants should be prioritised to proceed to full assessment and authorisation. Around 65% of applications are now being prioritised, due to people having a higher level of need. The current arrangement targets resources to respond to priority applications, however this sits against an increasing number of people waiting to be fully assessed, as indicated in Table 1, below.

Table 1



1.3 With the increased number of applications submitted, the DOLS function has implemented different measures to help manage the demand and ensure that as many people as possible are safeguarded. Where possible digital solutions have been developed by the service to ensure better ways of working which are efficient, reduce handoffs and ensure the right resource is used at the right time. These include:

- Developing and introducing an online application process that ensures Managing Authorities (Hospitals and Care Homes) complete all the necessary information required to start the DOLS process. This has enabled the team to triage at pace and rigor, moving the person into the correct pathway or next step in the process or to be ready for allocation.
- The Business Support Team monitors all applications submitted by hospitals to ensure those people who are discharged, have their records updated quickly, avoiding an unnecessary visit by the Best Interest Assessor (BIA) and Doctor.
- Using the PowerBi functionality and reports to identify the people with a DOLS authorisation about to expire and making early contact with the care home to use any previous assessment where possible. This proactive approach has reduced the cost and time spend for doctors.
- Regular quarterly checks with care homes to see if a person whose application is pending is safe and still needs an assessment. This work ensures that accurate data is held, that checks have been made on the person and where necessary an assessment brought forward, and that the Adult Social Care Case Management System (Mosaic) has been updated if the assessment for the person is no longer required.

1.4 The managed approach to operating the DOLS Service in Kent, as described in 1.3 above, underpins the risk management methodology, adopted by the team through obligations and lessons learnt from Coroners cases, Local

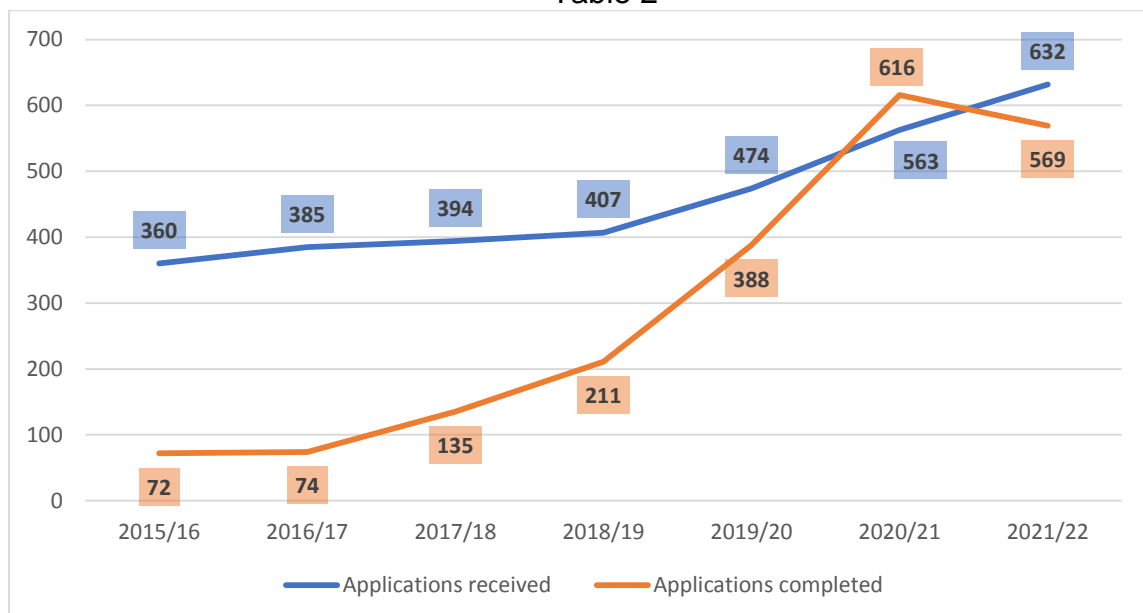
Government Social Care Ombudsman (LGSCO) Public Reports, The Human Rights Act, The Mental Capacity Act and in preparation for Liberty Protection Safeguards.

2. Published Data

2.1 Annually all local authorities submit data to NHS Digital which is published on its website. The data allows benchmarking to occur nationally and alongside other local authorities of a similar nature. This year's data set was published in August 2022 and covers the period from April 2021 to March 2022.

2.2 This data confirms the number of applications in Kent continues to increase year on year. Table 2 below shows at a rate per 100,000 of the population, the number of received and completed DOLS applications annually in the county.

Table 2



2.3 Performance colleagues have analysed the NHS data and reviewed information in the PowerBi report to forecast demand for 2022/2023. The findings present a range to consider being between 9,586 – 10,504 applications being received by 31 March 2023. To give a breakdown of those figures:

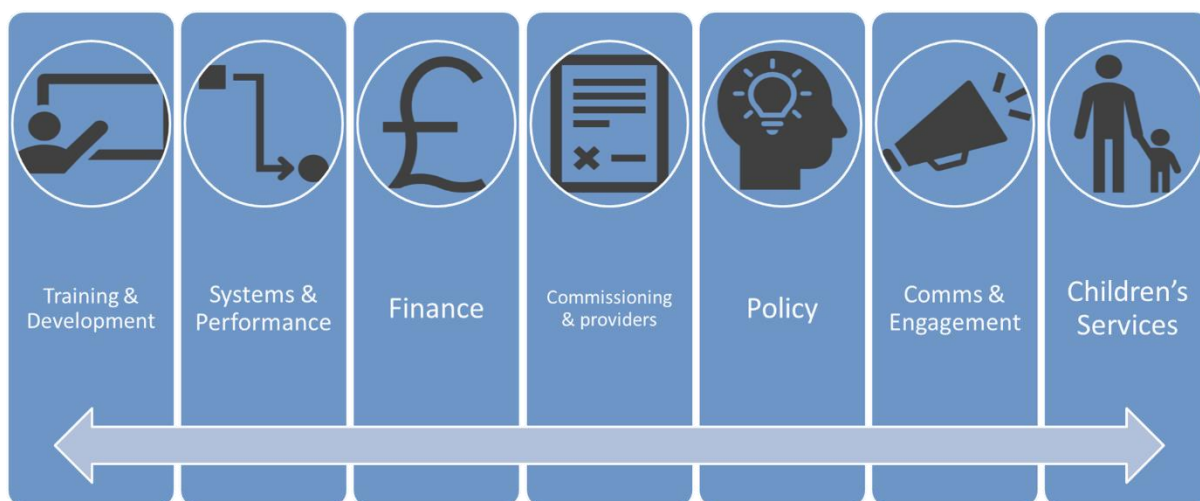
- 9,586 is based on a continual increase of 12.5% from the previous year. (7576 to 8521)
- 10,504 is a 7% increase on the current Q1 figure of 2,454 then multiplied by four for the year. The 7% is the increase from Q1 21/22 and Q1 22/23 (7% of 8% is the increase comparison of the previous three quarters to the same time last year).

Whilst (b) above may not be exact, it proposes a realistic calculation when compared to similar estimates.

3. Liberty Protection Safeguards

- 3.1 The public consultation on the Liberty Protection Safeguards (LPS) Code of Practice commenced on 17 March 2022 and ran for a 16-week period, closing on 7 July 2022. Adult Social Care in Kent submitted a response to the public consultation. At the point of publication, it was confirmed that central Government wanted to consider all the views received as part of the consultation exercise before making final decisions about how LPS will be implemented and a 'Go Live' date for the new legislative framework. Local Authorities continue to wait for feedback from the consultation, together with a formal start date.
- 3.2 Whilst there is no 'Go Live' date for the new legislation, it is imperative planning continues whilst running the existing service. A high-level project plan has been developed (Table 3 below) but further work will be required in each of the identified areas such as, training and development, systems solution, commissioning, communication, addressing the backlog, to ensure Kent's readiness to implement the requirements of the new legislation. Further, the changeover dictates the dual running systems for 12 months whilst a person's DOLS remains in place (6-12 months) and people are assessed under the new LPS legal framework.

Table 3



- 3.4 Health Partners have started to train their staff as Best Interest Assessors to prepare for LPS, however historic arrangements with training providers necessitate support and shadowing experience with KCC as the Supervisory Body. This will impact on existing resources within the DOLS Team but will be supported in the spirit of partnership work and the interest of ensuring people are safeguarded once the new system comes into effect.

4. Financial Implications

- 4.1 Current resource levels continue to be challenging but all applications for a DOLS continue to be reviewed, monitored, and prioritised within the available financial envelope. The number of priority applications remains high and the DOLS team cannot complete all the applications that are submitted by hospitals and care homes. The work of the team is supported by resources within community teams and staff holding a BIA qualification are used to support and increase capacity.

5. Legal implications

- 5.1 The legal consequences for the Supervisory Body in failing to meet its statutory responsibilities are significant. Unlawful detentions, as well as breaching a person's right to liberty and freedom, impacting on their rights to privacy and a family life, significantly increases the risk of harm and potential abuse, where there has been no independent scrutiny, assessment, and authorisation. Further, Kent County Council potentially risks further S21a challenges (Mental Capacity Act 2005) if the person, subject to a DOLS wishes to pursue the judicial route. The Local Authority/ Supervisory Body can also be fined for any period where there has been an unlawful deprivation of a person's liberty.

6. Equality implications

- 6.1 All the people who access this service will have the protected characteristics relating to age and disability as the key intersectional interface. Failure to deliver services as defined by the Cheshire West judgement will not only lead to a breach of the Public Sector Equality duty but may also have significant implications for their individual Human Rights.

7. Conclusion

- 7.1 KCC continues to await further information regarding the position for Liberty Protection Safeguards including feedback from the consultation together with an implementation date. Until that time planning for the change will continue but demand for the current service increases month on month. Prioritising people to be seen will continue within the available resources and the service will remain closely monitored.

8. Recommendations

<p>8.1 Recommendation: The Adult Social Care Cabinet Committee is asked to NOTE the content of the report.</p>

9. Report Author

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