

**HAMPSHIRE COUNTY COUNCIL****Report**

<b>Committee:</b>	Safe and Healthy People Select Committee
<b>Date:</b>	26 November 2010
<b>Title:</b>	Deprivation of Liberty Safeguards update (statistics)
<b>Reference:</b>	2356
<b>Report From:</b>	Director of Adult Services

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**1. Purpose of Report**

- 1.1. Following on from the report to this committee of 13 November 2009, this report gives an update on the data collected in relation to the Deprivation of Liberty Safeguards in order to report for the NHS Information Centre statutory quarterly return.
- 1.2. The report contains comparisons between Hampshire County Council data and national/regional figures which had not been published at the time of the last report.

**2. Contextual Information - Deprivation of Liberty Safeguards Background**

- 2.1. The Deprivation of Liberty Safeguards (DOLS) were introduced in April 2009 to protect the human rights of people who lack capacity and are deprived of liberty in registered care homes or hospitals, but are not detained under the Mental Health Act 1983. This amendment to the Mental Capacity Act 2005 (MCA) was a result of the European Court of Human Rights judgement in the Bournemouth Case in October 2004.
- 2.2. The main objective of DOLS is to prevent deprivation of liberty whenever possible. However, when it is necessary in the person's best interests to prevent harm to them they will be assessed by a doctor and another staff member (social worker, nurse, OT or psychologist) to help the County Council (for care homes) or the PCT (for hospitals) determine whether or not the deprivation should go ahead. Unbefriended people who are deprived of their liberty are entitled to a paid representative, and those with family representatives have access to the Independent Mental Capacity Advocacy service for support.
- 2.3. Hampshire County Council operates a joint DOLS system with NHS Hampshire, as the two supervisory bodies in the county, to receive referrals from all care homes and hospitals (managing authorities) and carry out assessments. The final decision about whether or not to authorise deprivation

of liberty has to be made by the relevant supervisory body. The joint system is governed by a working agreement with NHS Hampshire, which is regularly reviewed.

2.4. The system consists of:

- full time administrator
- team management from the MCA development manager
- daily DOLS system management from DOLS senior practitioner (introduced in April 2010)
- team of best interests assessors (BIAs), central & dispersed
- overall responsibility from the MCA lead (strategic service manager)
- authoriser role, carried out by 6 senior managers.

### **Statutory data returns**

2.5. The NHS Information Centre collects quarterly statutory returns, which the MCA Lead has to date taken responsibility for submitting, on behalf of both HCC and NHS Hampshire. The data has to be submitted within 21 days from the end of each quarter.

2.6. The NHS Information Centre recently published its first annual report, containing details of DOLS statutory returns grouped by Government Office Region (GOR) for Local Authorities and Strategic Health Authority areas for PCTs.

2.7. The annual report highlights a few key messages:

- Nationally, the level of referrals is running at about a third of the level expected (Hampshire: 20%)
- However the DH expected that 25% of assessments would be converted into authorised DOLS, in fact the proportion is 45% and rising (Hampshire: 58%), which is thought to indicate a better understanding of the concept of deprivation of liberty at an earlier stage than was expected, leading to more accurate referrals
- The majority of applications are for people lacking capacity because of dementia: 53% (Hampshire: 44%), and more than half are for people aged over 75
- There are significant variations in referral rates between areas, with no apparent correlation to care home and hospital population sizes, indicating that there is still a substantial need for awareness raising and training in some parts of the country.

### **3. Data commentary**

3.1. It is possible to show some limited comparisons between Hampshire County Council figures, national totals and the South East GOR figures (Q1 – Q4 represent 2009/10, Q5 represents April – June 2010):

**Table 1: Comparative figures for total number of DOLS assessments**

3.2. Note that the proportion of assessments authorised has increased throughout the year nationally and regionally, with a less consistent pattern in Hampshire.

	<b>National total for LAs</b>					
	<b>Q1</b>	<b>Q2</b>	<b>Q3</b>	<b>Q4</b>	<b>Total 1-4</b>	<b>Q5</b>
<b>Total number of assessments</b>	1336	1273	1399	1389	5397	1604
<b>Number authorised</b>	412 (31%)	562 (44%)	716 (51%)	749 (54%)	2439 (45%)	886 (55%)
<b>Number not authorised</b>	924 (69%)	711 (56%)	683 (49%)	640 (46%)	2958 (55%)	718 (45%)

	<b>South East GOR</b>					
	<b>Q1</b>	<b>Q2</b>	<b>Q3</b>	<b>Q4</b>	<b>Total 1-4</b>	<b>Q5</b>
<b>Total number of assessments</b>	213	223	227	257	920	306
<b>Number authorised</b>	56 (26%)	72 (32%)	112 (49%)	127 (49%)	367 (40%)	178 (58%)
<b>Number not authorised</b>	157 (74%)	151 (68%)	151 (51%)	130 (51%)	553 (60%)	128 (42%)

	<b>Hampshire County Council</b>					
	<b>Q1</b>	<b>Q2</b>	<b>Q3</b>	<b>Q4</b>	<b>Total</b>	<b>Q5</b>
<b>Total number of assessments</b>	10	27	29	30	96	35
<b>Number authorised</b>	7 (70%)	14 (52%)	19 (66%)	16 (53%)	56 (58%)	25 (71%)
<b>Number not authorised</b>	3 (30%)	13 (48%)	10 (34%)	14 (47%)	40 (42%)	10 (29%)

3.3. For tables 2 – 5, there is consistency between the national, regional and Hampshire figures:

**Table 2a: Age statistics % of total for whole year 2009/10**

	<b>National total for LAs</b>	<b>South East GOR</b>	<b>Hampshire County Council</b>
<b>18 to 64</b>	33.6	29	32.5
<b>65 to 74</b>	12.9	11	5
<b>75 to 84</b>	28.6	29	32.5
<b>85 and over</b>	24.8	31	30

**Table 2b: Age statistics % of total for April 2010 – June 2010**

	National total for LAs	South East GOR	Hampshire County Council
<b>18 to 64</b>	28	27	34
<b>65 to 74</b>	11	5	11.5
<b>75 to 84</b>	30	29	23
<b>85 and over</b>	31	39	31.5

**Table 3a: Gender statistics % of total for whole year 2009/10**

	National total for LAs	South East GOR	Hampshire County Council
<b>Male</b>	47	44	36
<b>Female</b>	53	56	64

**Table 3b: Gender statistics % of total for April 2010 – June 2010**

	National total for LAs	South East GOR	Hampshire County Council
<b>Male</b>	43	39	43
<b>Female</b>	57	61	57

**Table 4a: Disability statistics % of total for whole year 2009/10  
(note: each person can come under multiple categories)**

	National total for LAs	South East GOR	Hampshire County Council
<b>Physical disability</b>	42	42	33
<b>Mental health</b>	66	62	58
<b>Dementia (subset of mental health)</b>	53	52	44
<b>Learning disability</b>	20	20	22

**Table 4b: Disability statistics % of total for April 2010 – June 2010  
(note: each person can come under multiple categories)**

	National total for LAs	South East GOR	Hampshire County Council
<b>Physical disability</b>	46	53	57
<b>Mental health</b>	71	74	54
<b>Dementia (subset of mental health)</b>	56	64	51
<b>Learning disability</b>	16	17	14

**Table 5a: Urgent authorisation requests % of total for whole year 2009/10**

	National total for LAs	South East GOR	Hampshire County Council
<b>Urgent requests (to be completed in 7 days)</b>	69	68	72
<b>Standard requests (to be completed in 21 days)</b>	31	32	28

**Table 5b: Urgent authorisation requests % of total for April 2010 – June 2010**

	National total for LAs	South East GOR	Hampshire County Council
<b>Urgent requests (to be completed in 7 days)</b>	65	73	69
<b>Standard requests (to be completed in 21 days)</b>	35	27	31

3.4. The proportion of referrals not authorised because the person has capacity are significantly higher in Hampshire during 2009/10 (table 6a). Quality of mental capacity assessments in the county has been highlighted as an issue from various sources, and there are plans to address this through the forthcoming recording guidance, current and future training events with residential care homes and a DH funded audit of use of the Hampshire MCA assessment toolkit.

**Table 6a: Reason not authorised % of totals for whole year 2009/10**

	National total for LAs	South East GOR	Hampshire County Council
<b>Age requirement not met</b>	Negligible	Negligible	0
<b>Mental health requirement not met</b>	1.5	0.7	0
<b>Mental capacity requirement not met</b>	10	9	22.5
<b>No refusals requirement not met</b>	Negligible	0.5	0
<b>Eligibility requirement not met</b>	3	1.4	0
<b>Best interests requirement not met (main reason: no deprivation)</b>	85.3	88	77.5

**Table 6b: Reason not authorised % of totals for April 2010 – June 2010**

	National total for LAs	South East GOR	Hampshire County Council
<b>Age requirement not met</b>	Negligible	0	0
<b>Mental health requirement not met</b>	1.8	Negligible	0
<b>Mental capacity requirement not met</b>	9	10.3	0
<b>No refusals requirement not met</b>	Negligible	0	0
<b>Eligibility requirement not met</b>	3.4	2.4	0
<b>Best interests requirement not met (main reason: no deprivation)</b>	85.4	86.5	100

#### 4. Conclusions

4.1. The quarterly DOLS returns to the NHS Information Centre will continue for the foreseeable future, although the frequency may reduce in due course, and they provide a good overall summary of DOLS activity in the county, and have the potential to flag up areas for improvement. We are still at an early stage to be conducting in depth analysis of the data, and it is difficult to make meaningful comparisons without the figures for other local authorities being published individually. It is possible, however, to comment that Hampshire data is average amongst similar shire counties and is not an outlier.

- 4.2. Further opportunity for improvement is provided by the Hampshire County Council Internal Audit team, who are currently auditing the DOLS process and will make recommendations about any enhancements that can be made to our systems.
- 4.3. In 2013, when PCTs come to an end, if the Health Bill proceeds as planned, local authorities will become the supervisory body for hospital DOLS authorisations in the place of PCTs. It is planned that there will be some transfer of funding to accompany the additional responsibility. As we already have a joint system in place with the PCT and work closely with them, we are well placed for this transfer and the additional funds will be crucial in the current financial climate.

**CORPORATE OR LEGAL INFORMATION:****Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	yes
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	yes
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	no
Corporate Improvement plan link number (if appropriate):	

**Other Significant Links**

<b>Links to previous Member decisions:</b>		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
<b>Direct links to specific legislation or Government Directives</b>		
<u>Title</u> Mental Capacity Act 2005, with Deprivation of Liberty Safeguards as amended by Mental Health Act 2007		<u>Date:</u> enacted April 2009

**Section 100 D - Local Government Act 1972 - background documents**

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

DocumentLocation

None

## **IMPACT ASSESSMENTS:**

### **1. Equalities Impact Assessment:**

1.1. There is no evidence to date of any negative impact on equalities from DOLS.

### **2. Impact on Crime and Disorder:**

2.1. N/A

### **3. Climate Change:**

- a) How does what is being proposed impact on our carbon footprint / energy consumption? **N/A**
- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts? **N/A**