

Mental Capacity Act and Deprivation of Liberty Safeguards

E-Newsletter for Managing Authorities February 2017

Welcome to the February 2017 newsletter! Please share this newsletter with interested colleagues.

Topics Covered in this newsletter

- DoLS referral acknowledgments
- National statistics
- Covert medication
- Positive outcomes from DoLS
- 21A Appeals

DoLS referral acknowledgments.

As you may be aware we can receive up to 250 DoLS referrals a month, and every referral receives an automatic email response back to the Managing Authority, confirming its receipt. ***Could you please print this email and place in the person case notes as this is then your evidence that you have referred the person to us. This is all the evidence you will need for the CQC, as that is all that is required from you is a referral to the Local Authority.*** BUT if the person's condition changes you need to contact the DoLS team who will in turn will look at reprioritising your request if necessary. Unfortunately due to the volume of work the DoLS team cannot check a particular Home's list of referrals and where they are at a given time in the DoLS process. Please also note as previously mentioned due to the large amount of referrals we receive we do prioritising each referrals using the ADASS tool. To enable us to prioritise we do need as much information as possible especially around restrictions, use of covert medication and objections. Also it's very important that we are made aware of family or lack of family involvement with the person.



Mental Capacity Act (2005) Deprivation of Liberty Safeguards: England 2015-16, Official Statistics

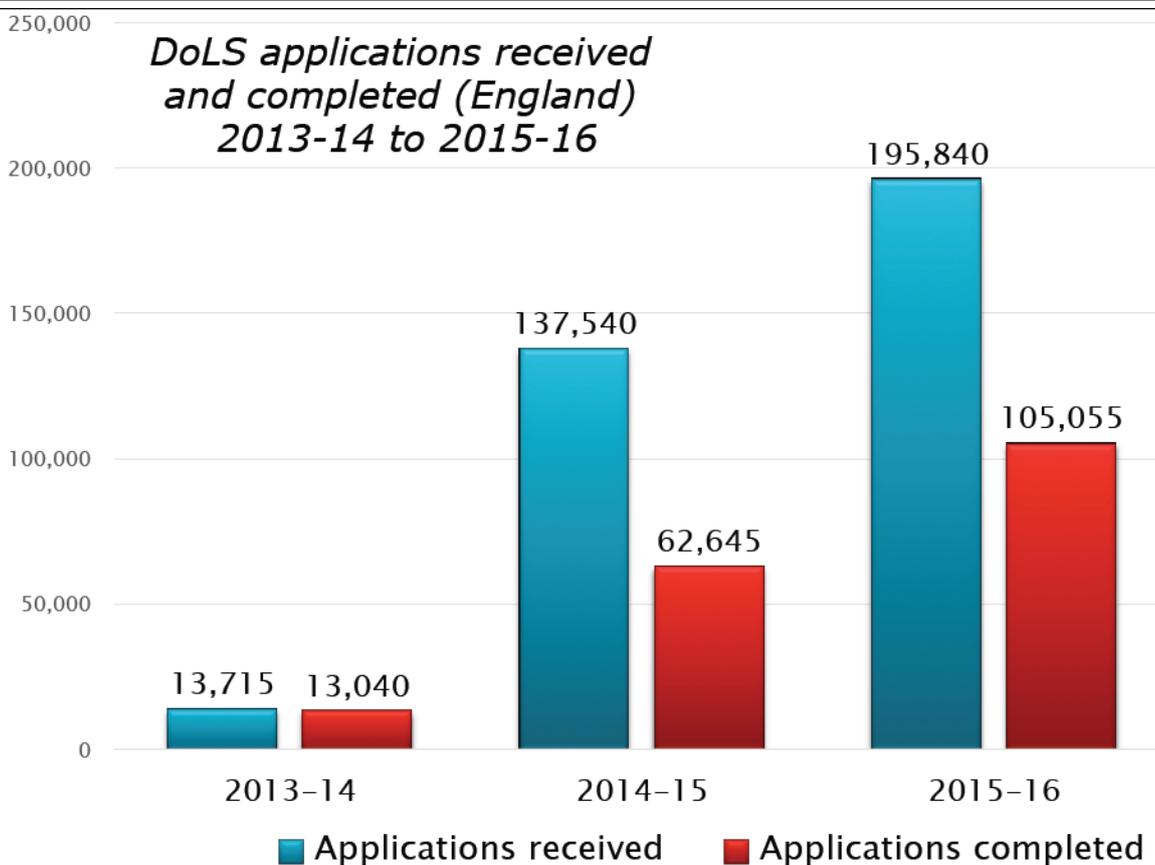


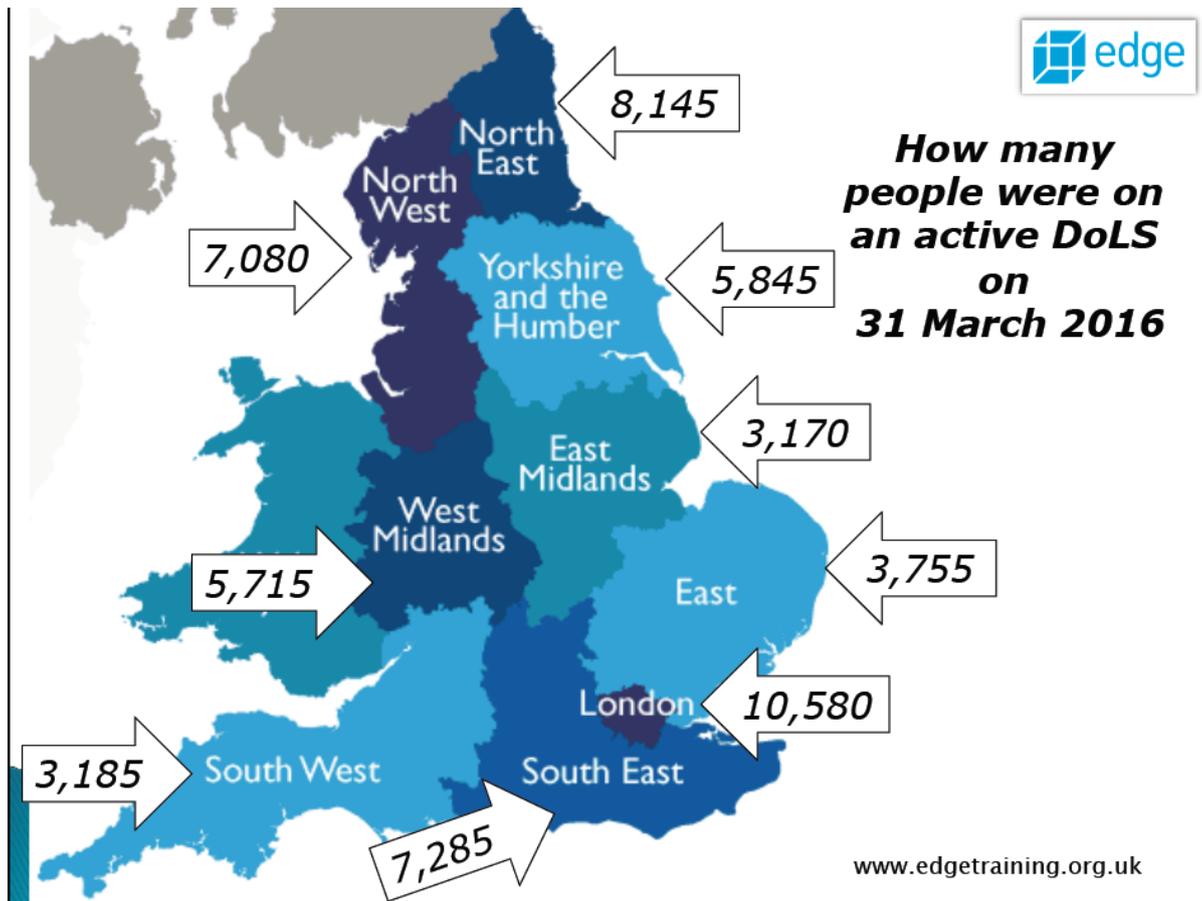
Mental Capacity Act (2005) Deprivation of Liberty Safeguards (England)

England 2015-16 National Statistics

Published 28 September 2016

- **195,840** DoLS applications received by councils in England for the year ending March 2016. Over 84,000 applications were waiting to be assessed/ completed at the end of March 2016.
- On average **16,320** applications were received each month
- 51% of applications took more than six months to be assessed and completed (signed off).
- The majority of standard authorisations are still for **less than three months** (60%).
- Duration of more than six months shows regional variation: East Midlands = 26% v North East = 10% (of authorisations)





Covert medication

Please note the use of Covert medication is a restriction that can be, or contribute to, a deprivation of liberty.

It is felt this issue needed to be highlighted following a recent case law. It involves a case heard this summer 2016 by Judge Bellamy around the use of covert medication in the case of AGvBMBC case law.

Covert medication is defined by the NICE guidelines Managing Medicines in Care Homes as occurring 'when medicines are administered in a disguised format without the knowledge or consent of the person receiving them, for example, in food or drink.'

Only medicines which are essential for the person to prevent serious consequences or deterioration of their condition should be administered covertly and only when absolutely necessary.

Covert administration can only be considered when a person lacks capacity to make a decision about their medical treatment or if the covert administration is part of a documented plan in accordance with the Mental Capacity Act.

Consideration should be given as to whether the covert administration of medication also represents a deprivation of the person's liberty or contributes to an existing deprivation of liberty, this is most likely to be the case when the medication is intended to control or modify behaviour including sedation.

If the person is already subject to a deprivation of liberty authorisation, staff should report new covert administration of a medication to the Supervisory Body by contacting the relevant DoLS Team. North Yorkshire Council DoLS team can be contacted on 01609 536829. If a person lacks capacity as defined by the mental capacity assessment (Mental Capacity Act 2005) then staff must follow the process as laid down in the Code of Practice to this Act. The Registered Manager needs to establish whether the person has made a valid and applicable advanced decision in relation to medication which must then be followed.

The Registered Manager must also have contacted the GP, to give the GP the full details of the pattern of refusal of medication. For example, is medication mainly refused at certain times of day? Is only particular medication refused? Are medications consistently refused or taken some days and not others? The GP will need this information, when considering issues such as whether a medication requires discontinuing gradually or if alternatives to covert administration are possible, for example, changing the time of administration.

Any decision made about the covert use of medication, must be in the person's Best Interests. The Manager will consult with or arrange a Best Interest's multi- professional team meeting that includes the GP (decision maker as the prescriber), staff, and the person Relevant Person's Representative, deputy or IMCA to discuss the use of covert medication the meeting should refer to the decision maker. If there is no agreement then there should be an immediate application to the Court of Protection.

Decisions made must be recorded in the provider service support plan with a date for review. Staff must develop a Management/Support Plan which is specific for that person and around administration of covert medication.

If a decision to administer medication covertly as a result of the above process is made the GP should consider if each medication is essential and consider discontinuing any medication which is no longer required. Although this is a clinical decision, staff should be aware if there is a person with legal responsibility for making decisions about health and welfare, i.e. Lasting Power of Attorney and consult that person.

Administering medication in food or drink or altering the dosage form may affect the way a medication works. The GP or staff should consult a pharmacist to determine the most appropriate way to administer the medication covertly. The prescriber should ensure that staff are given clear written instructions on how the medication is to be administered. The Registered Manager should ensure that the information is included in the person's provider service support plan and is available to all staff who are to administer that person's medication.

Staff should review the use of covert administration on a regular basis with the GP who should ensure that appropriate monitoring is in place, where necessary, when administration methods are changed. The review should be at least every 6 months or sooner if circumstances change.

Where for example, a new medication which modifies behaviour or causes sedation added to the Management Plan should trigger a request for review of any existing DoLS authorisation.

Listed below are the points highlighted in the recent ruling by Judge Bellamy around covert medication in the case of AGvBMBC and is now in case law.

That full consultation should take place with all interested parties involved around the use of covert medication i.e. the best interests meeting referred to above.

If applying for DoLS authorisation and covert medication is in existence then it must be mentioned in the referral and in the DoLS assessment and in the authorisation.

If a standard DoLS authorisation is to be no longer than six months or 12 months, the relevant social care assessment team must ensure there are regular reviews of the care and support plan involving those referred to at 12 above.

A Relevant Person's Representative should be fully involved in discussions and reviews around the use of covert medication, so that if appropriate a DoLS application or DoLS review can be made.

Where medication is covertly provided, any change in medication or treatment regime should also trigger a DoLS review. This can be managed by the use of conditions within the standard authorisation.

Positive Outcomes of DoLS BIA survey

A recent national online survey carried out by Edge Training of DoLS BIA assessors asked them to identify the positive outcomes of their assessments as part of the DoLS process. Ninety-two BIAs completed the survey and provided a total of 468.

Examples of positive outcomes:

- Person found to have capacity
- Improved social activities/access to community
- Helping staff, family and other professionals understand
- MCA/highlighting poor use of MCA
- Triggering a review of inappropriate placement
- Review of care plan/needs
- Reduced restrictions in care plan
- Miscellaneous issues
- Person returned to live at home/community
- Safeguarding alerts or CQC alerts or Court of Protection
- Applications
- Restrictions on contact with family reduced
- Review of medication to manage behaviour
- Specialist assessment requested (OT, SALT, MH)
- Changes to improve care delivery
- Inappropriate physical restraint reduced

21A Appeals/RPR

Just an update to say nationally there remains an increase in the number of DoLS 21A appeals that are being processed at Court of Protection. Every person who is subject to a DoLS has the right to appeal, even if its felt that their package of care is in their Best Interest and that the appeal may fail .Therefore, it needs to be stated that if a patient or a resident is appealing against their DoLS, it does not necessarily reflect badly on the care they are currently receiving. The RPR is crucial in supporting the relevant person in the appeal process. A reminder that the RPR needs to visit at least every 6 weeks. If you are aware of someone who's RPR does not visit could you please let us know, then we can review the situation.

No Forms to be faxed anymore

Please note: DoLS forms that are faxed will not be accepted by NYCC. All DoLS forms should be scanned and emailed to Social.care@northyorks.gcsx.gov.uk. **Remember there has to be a signature on the referral form or it cannot be accepted this is a legal requirement.**

If you have not got access to a scanner then the Forms can be posted to this address. North Yorkshire County Council, Customer Service Centre, East Block, County Hall, Northallerton, DL7 8AH

Paperwork

A reminder of the current paperwork.

Forms 1 and 4, urgent and standard are now combined and form 2 is much shorter please find templates below.

Usual Reminders !

When someone is subject to a DoLS dies please let the DoLS office and Coroner's office know immediately. In this instance if you feel unsure if a person is subject to a DoLS please contact us.

Also the DoLS team need to know when someone is discharged from hospital or moved from one Care Home to another any changes in Residency has an impact on the DoLS. Thank you very much for your cooperation in these matters.

Also please note if a person needs an interpreter to support them in the DoLS assessment process please enter this on the referral form, to enable the DoLS team to arrange for an interpreter to be present during the assessments.

If you give us an email address to contact you, please make sure it's an address that is checked regularly

If you aware of any good practice around MCA or DoLS we would be very interested to share in the future newsletter

Contact Us

The NYCC MCA/DoLS Office is open:

Monday –Thursday 8:30am- 5:00pm and Friday 8:30am- 4:30pm

DoLS helpline number 01609 536829. Calls will be monitored and returned between 10am-3pm. Please note that this number is for follow up/queries only. We have a general email address which is monitored for queries but not referrals – dols@northyorks.gov.uk

If you require DoLS authorisation outside of these times or during a bank holiday period please process the application in the usual way and it will be acted on upon our return.

Sending Referrals emailed to: Social.care@northyorks.gcsx.gov.uk.

Or post North Yorkshire County Council, Customer Service Centre, East Block, County Hall, Northallerton, DL7 8AH

