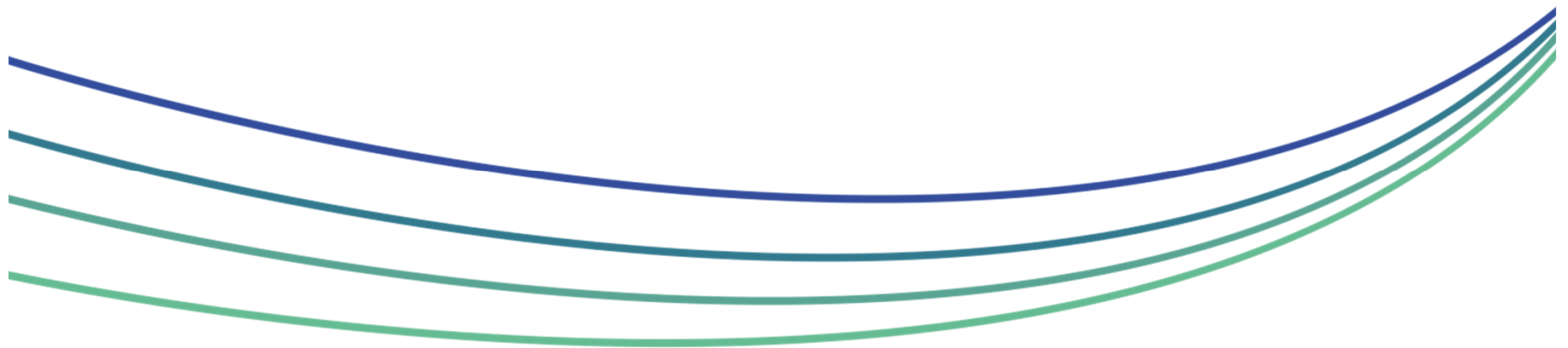


# Deprivation of Liberty Safeguards (DOLS)



**HALTON**

**SAFEGUARDING**

**ADULTS**

**BOARD**

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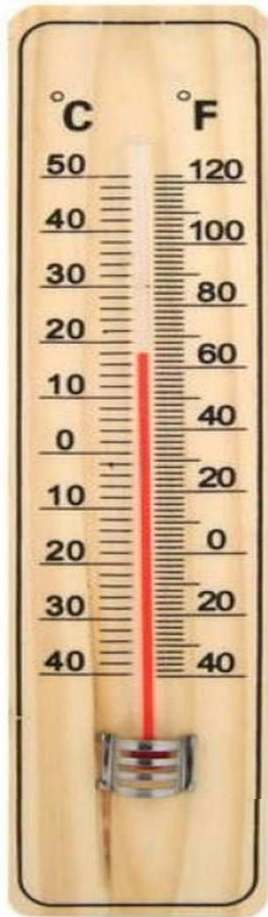
[dols@halton.gov.uk](mailto:dols@halton.gov.uk)

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# DoLS – what do you know?



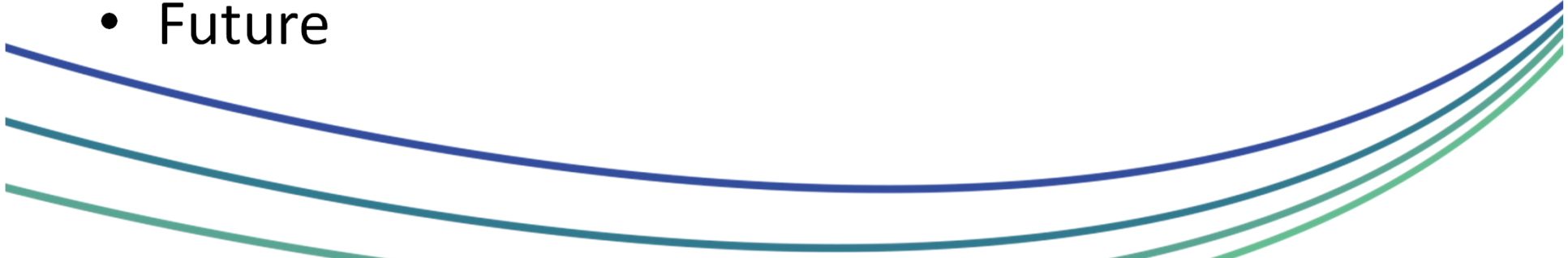
I know a lot?



I don't know anything!

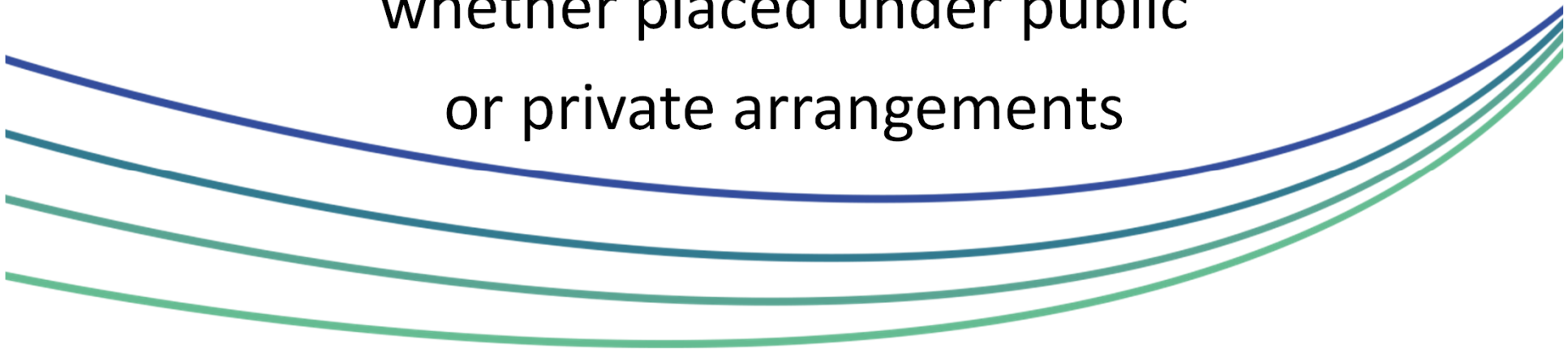


# Areas Covering today

- When DOLS came into force and who they apply to.
  - What is a DoL?
  - DOLS process
    - Assessment phase
    - Authorisation phase
    - Review phase
  - Current Climate
  - Future
- 

# Who will DoLS apply to?

The deprivation of liberty safeguards will cover people in hospitals, and people in care homes registered under the Care Standards Act 2000, whether placed under public or private arrangements



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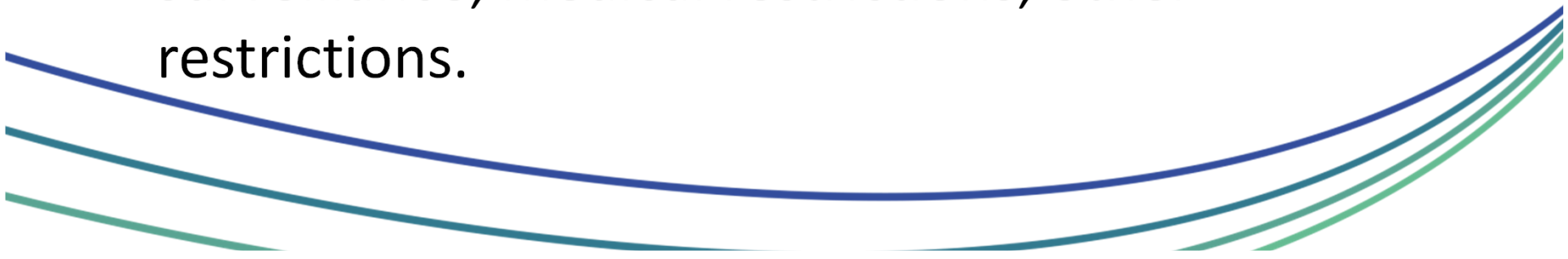
When did DoLS commence?

April 2009

(as part of the Mental Capacity  
Act 2005, implemented in 2007)



## DoLS Law and Criteria (2009)

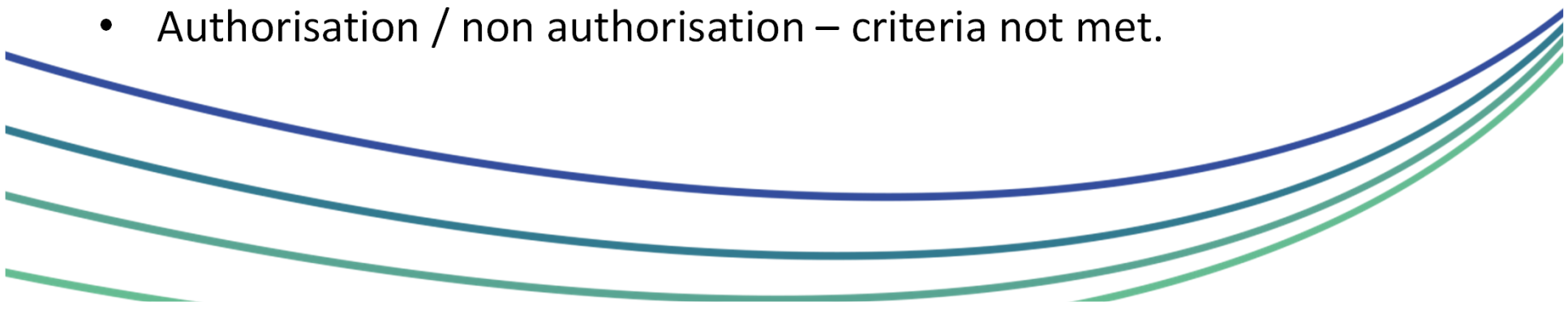
- A deprivation of liberty is not in itself illegal, but it is, if not sanctioned by legal processes. (Article 5 of the ECHR)
  - 2009 – Criteria for a DoL – occurs as a result of a number of restrictions placed on a person who lacks the capacity to consent these arrangements.
  - Examples – restraint, forced care, electronic surveillance, medical restrictions, other restrictions.
- 

# Requests

- The Managing Authority (care home or hospital) requests authorisation to the Supervisory Body (the Local Authority who made the arrangements for care homes and the Local Authority where the Relevant Person is ordinary resident)
- Request for Standard Authorisation – planned admissions – 21 days
- Request for Urgent Authorisation – emergency admissions – 7 days (can extend to 14 if needed)



# Assessment Criteria

- Conducted by a Best Interests Assessor (BIA) and Mental Health Assessor (MHA) (Section 12 Dr)
  - **Age** – 18+
  - **Mental Disorder** – any disorder of the mind or brain
  - **Lack of Capacity** – consenting to care/arrangements
  - **Eligibility** – is the Mental Health Act more appropriate? Risk to others?
  - **No Refusals** – Advanced Decisions and right to refuse treatment
  - **Best Interests** – least restrictive, proportionate given risk
  - As part of the assessment process, the BIA needs to nominate someone to act on behalf of the Relevant Person – RPR
  - Authorisation / non authorisation – criteria not met.
- 

# Halton – referrals

Year	No of DoLS
2009/10	12
2010/11	11
2011/12	34
2012/13	17
2013/14	33



# Supreme Court Judgement March 2014

- CWAC Case
- Re-defined criteria for a DoL
- 'Acid Test'
  - Lack capacity to consent to care and accommodation arrangements
  - Not free to leave
  - Under constant supervision and control

Floodgates opened – increase in referrals, no additional resource from Govt

- November 2014 – Re X Procedures
- Early 2015 – responsibility passed to IASU

# Halton Referrals

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Year	No of DoLS
2009/10	12
2010/11	11
2011/12	34
2012/13	17
2013/14	33
2014/15*	183
2015/16	420
2016/17	623
2017/18	584
2018/19	630

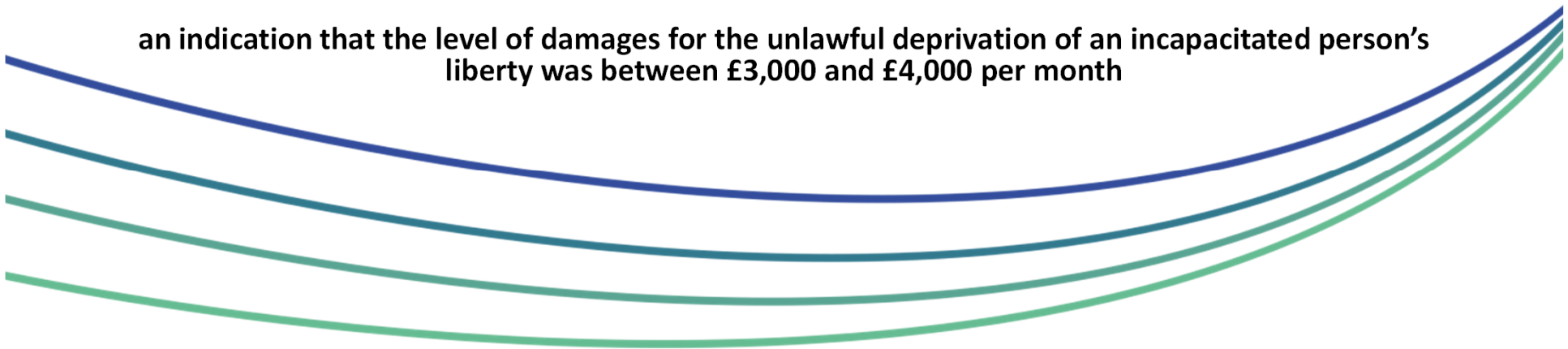
- Not enough BIA's – now 28 trained – issues – time, pressures etc
- More resource for commissioning Section 12 Doctors
- Majority of people in care subject to a DoLS
- Litigation – unauthorised DoLS in place

# Unlawful deprivation – Court of Protection case

## Essex County Council v RF & Ors (2015)

- P was 91 year old gentleman, a retired civil servant, who had served as a gunner with the RAF during the war. He had lived alone in his own house with his cat **Fluffy** since the death of his sister in 1998
- In May 2013 P was removed from his home by the local authority and placed in a locked dementia unit. It was not clear that P lacked capacity at the time and he was removed without any authorisation. The local authority eventually accepted that that P had been unlawfully deprived of his liberty for a period amounting to approximately 13 months
- A compromise agreement which included £60,000 damages for P's unlawful detention was agreed between the parties.
- [https://www.39essex.com/cop\\_cases/essex-county-council-v-rf-ors/](https://www.39essex.com/cop_cases/essex-county-council-v-rf-ors/)
- **Others**
  - London Borough of Hillingdon v Neary [2011] EWHC 3522 (COP), a period of 12 months' detention resulted in an award of £35,000
  - [A Local Authority v Mr and Mrs D](#) [2013] EWCOP B34, District Judge Mainwaring-Taylor approved an award of £15,000 (plus costs) to Mrs D for a period of 4 months unlawful detention

an indication that the level of damages for the unlawful deprivation of an incapacitated person's liberty was between £3,000 and £4,000 per month



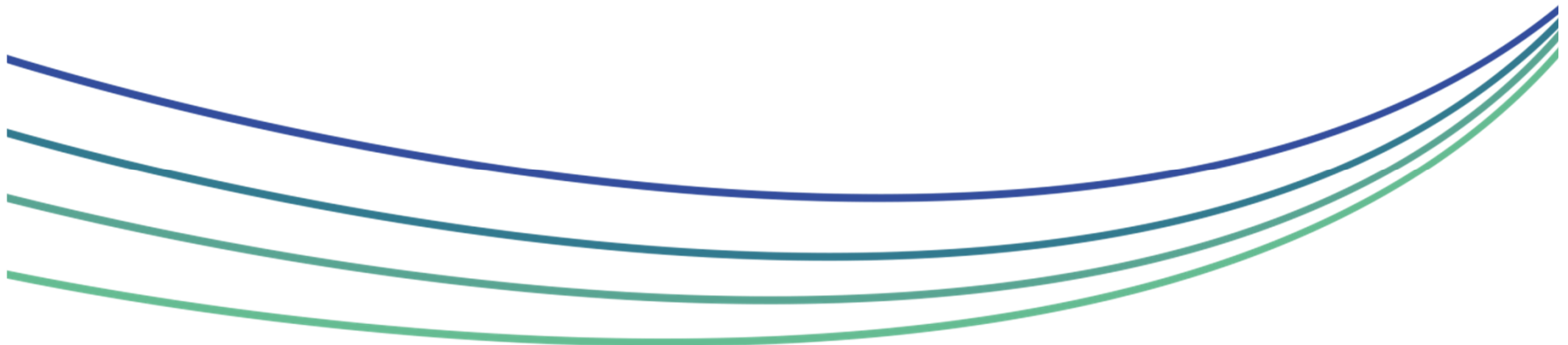
# Backlogs – how are Halton doing?

- June 2018 – 150 – backlog project – gone by October 2018
- June 2019 – 125

LA Name	Backlog/unallocated assessments
Lancashire	5000
Hertfordshire	5000
Essex	3467
Hampshire	4500
Kent	1686
Birmingham	1900
Nottinghamshire	1245
West Sussex	4400
Devon	2786
Oxfordshire	1400
Leicestershire	1200

## Backlog case – Local Ombudsman Staffordshire

- Staffordshire Council - ombudsman report
- Decided not to carry out assessments of medium and low priority cases
- 3000 cases – unlawful deprivation
- Staffordshire – ‘lack of financial resources’
- 74% of all standard requests were not assessed or assessed late and 92% of urgent requests were not assessed or assessed late.
- <https://www.communitycare.co.uk/2019/04/03/councils-decision-stop-majority-dols-assessments-left-3000-without-legal-protection-ombudsman-finds/>



# Extra Resource from Government 1 of 2

- on the application of Liverpool CC (1) Nottinghamshire CC (2) LB of Richmond-upon-Thames (3) Shropshire Council -and- Secretary of State for Health, and Secretary for Communities and Local Government (Interested Party)[2017] EWHC 986 (Admin), Garnham J, 2 May 2017
- A judicial review brought by local authorities challenging the government for failing to fund them to meet the extra costs of the deprivation of liberty safeguards after the UKSC decision in the Cheshire West case was dismissed
- Liverpool, Nottingham, Richmond Upon Thames, Shropshire challenged CWAC case – Govt not providing resource to meet demand.
- Government created an unacceptable risk of illegality – New Burdens Doctrine
- The councils referred to the costings exercise undertaken by the Law Commission, arguing that in order to fund the deprivation of liberty safeguards properly the government would need to provide between £405,664,343 and £651,564,435.



# Following on

- The court held:
- the claim was out of time and relief should be refused for that reason in any event;
- the councils are not unable to meet the costs of complying with their duties under the DoLS regime, although doing so is extremely difficult and involves diverting sums from other part of the councils' budgets;
- it followed that the government had not created a risk of illegality;
- the New Burdens Doctrine does not promise that local authorities will receive more funding from the government if a court judgment alters the understating of what is required of local authorities; there was therefore no breach of the doctrine.

Government therefore refused to offer additional resource to address backlogs following Supreme Court Judgement of March 2014

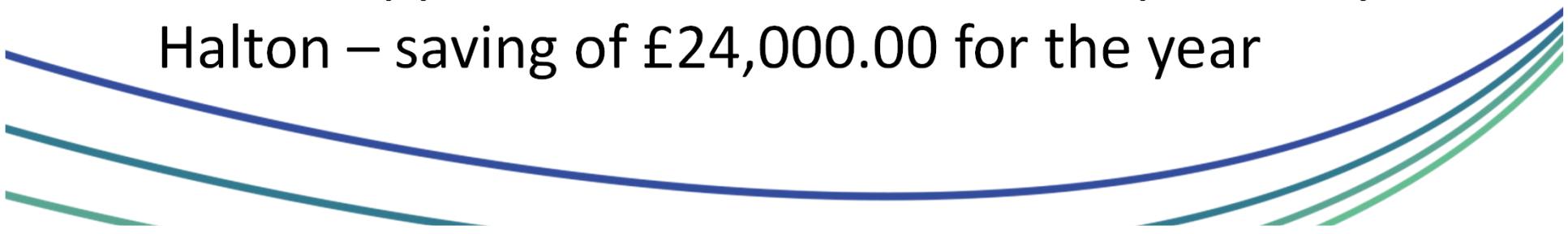
<https://www.gardencourtchambers.co.uk/news/social-welfare-updates/a-judicial-review-brought-by-local-authorities-challenging-the-government-for-failing-to-fund-them-to-meet-the-extra-costs-of-the-deprivation-of-liberty-safeguards-after-the-uksc-decision-in-the-cheshire-west-case-was-dismissed>



# Trained BIA's

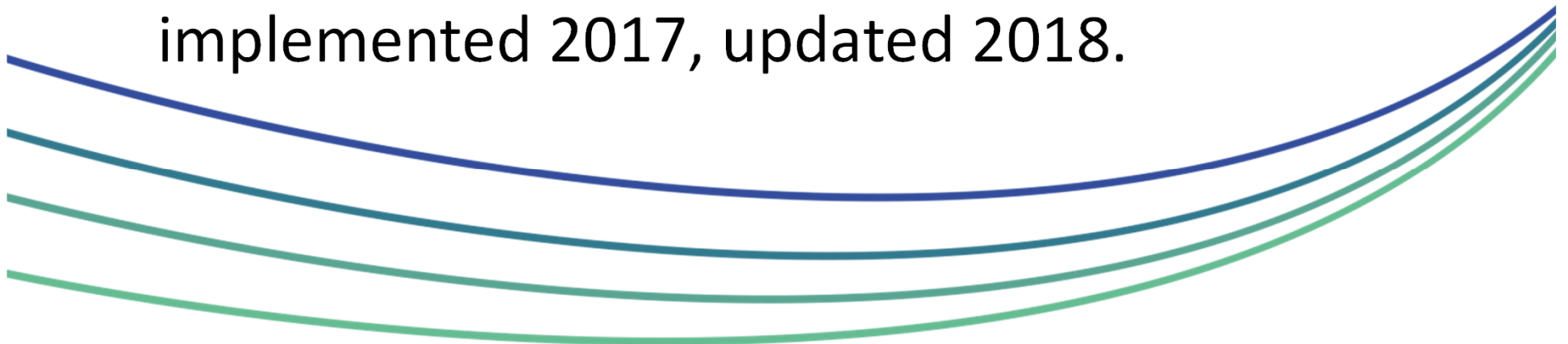
- In order to become a BIA, you need the following
  - Social worker, Nurse, Psychologist, Occupational Therapist with over 2 years post qualification experience,
  - Complete a post grad course at a university – 6 weeks (comparison – AMHP – course is over a year)
  - Yearly legal update required for BIA's
  - Halton in 2014 – 9 trained BIA's
  - Halton in June 2019 – 28 trained BIA's
- Areas of concern
  - BIA's unable to complete assessments due to other commitments/demands
  - When the Managing Authority is the same as the Supervisory Body (care homes owned and managed by Halton Borough Council), the BIA needs to be someone who isn't employed by the LA (3.21 of the DoLS Code of Practice) = additional resource of £300 per assessment by a BIA plus £100 per assessment by Section 12 Doctor.

# Section 12's local agreement

- Prior to January 2018, Section 12 Drs were paid £180 per assessment, plus mileage.
  - A joint approach from neighbouring authorities (St Helens, Halton, Knowsley, Warrington) agreed to approach Section 12 Dr's to agree a new rate of £100 per assessment
  - Section 12 Dr's have signed up for this.
  - 2018 – approx. 300 assessments completed by Halton – saving of £24,000.00 for the year
- 

# Measures to address backlog

- Overtime – local agreement – implemented June 2019
- 3.21 code of Practice – council owned care homes – employ 1 BIA to complete assessments
- ADASS Screening Tool – rag rating – implemented 2017, updated 2018.

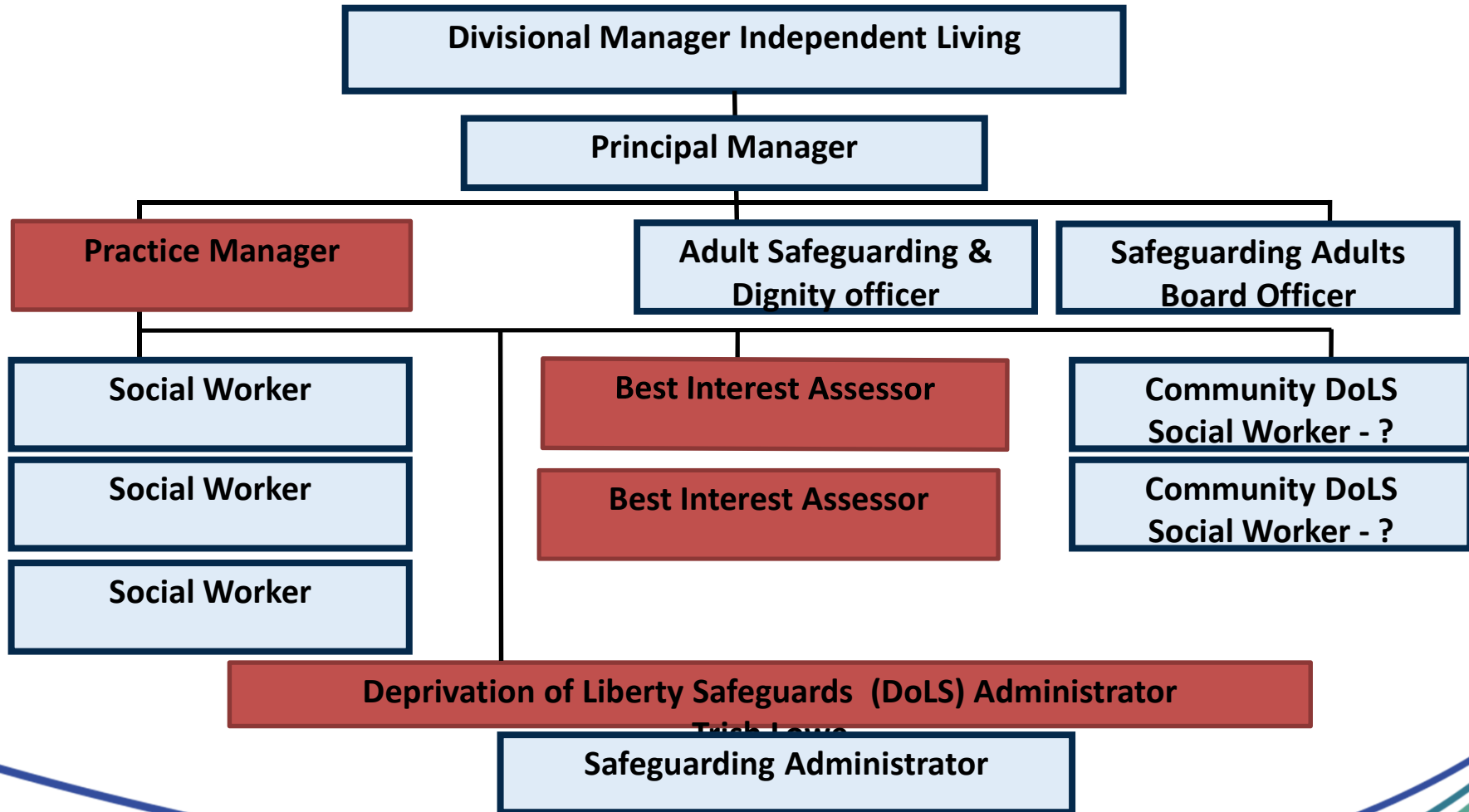


# Screening Tool for DoLS Requests

VERY HIGH	HIGH	MEDIUM	LOWER
<ul style="list-style-type: none"> <li>• Potential for Section 21(a) Challenge</li> <li>• Continuous 1-1 during day and/or night, requiring restraint used frequently</li> <li>• Restrictions on family/friend contact (or other Article 8 issue)</li> <li>• Active attempts to leave</li> <li>• Clear and active objection from person (Physical/Verbal) /friends/family</li> <li>• Seclusion</li> <li>• Physical restraint used regularly – equipment or persons</li> </ul>	<ul style="list-style-type: none"> <li>• Psychiatric or Acute Hospital and not free to leave</li> <li>• Continuous 1:1 care during the day and / or night</li> <li>• Objections from family /friends</li> <li>• Attempts to leave</li> <li>• New or unstable placement</li> <li>• Already subject to DoL about to expire</li> <li>• Sedation/medication used frequently to control behaviour</li> <li>• Section 17 leave</li> </ul>	<ul style="list-style-type: none"> <li>• Asking to leave but not consistently</li> <li>• Not making any active attempts to leave</li> <li>• Appears to be unsettled some of the time</li> <li>• Restraint or medication used infrequently.</li> <li>• Appears to meet some but not all aspects of the acid test</li> <li>• DoLS and CTO</li> <li>• Need for 39a IMCA to support with assessment process</li> </ul>	<ul style="list-style-type: none"> <li>• Minimal evidence of control and supervision</li> <li>• No specific restraints or restrictions being used. E.g. in a care home not objecting, no additional restrictions in place.</li> <li>• Have been living in the care home for some time ( at least a year )</li> <li>• Settled placement in care home/hospital placement, no evidence of objection etc. but may meet the requirements of the acid test.</li> <li>• End of life situations, which may meet the acid test but there will be no benefit to the person from the Safeguards</li> </ul>
<p><b>Allocation/timeframes</b></p> <ul style="list-style-type: none"> <li>• Very High Priority – allocated to BIA's within IASU. Timeframes need to be to.</li> </ul>	<p><b>Allocation/timeframes</b></p> <ul style="list-style-type: none"> <li>• High priority – allocated to Best Interests Assessors on BIA Rota to complete, within timeframes of requests for Urgent and Standard Authorisation – if IASU BIA's have no Very High cases, these can be allocated to them. Given priority over medium cases</li> </ul>	<p><b>Allocation/timeframes</b></p> <ul style="list-style-type: none"> <li>• Medium Priority – allocated to Best Interests Assessors on the BIA Rota and given priority over lower priority cases</li> </ul>	<p><b>Allocation/timeframes</b></p> <ul style="list-style-type: none"> <li>• Low priority – allocated to Best Interests Assessors on the BIA rota when there are no medium priority cases needing allocation</li> <li>• Allocated to Overtime/Backlog arrangements within the Local Authority.</li> </ul>

# The IASU Team

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# DoLS being scrapped - LPS

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- CWAC case – DoLS not fit for purpose
- Law Commission commissioned to review Autumn 2014
- Findings - early 2017 – scrap DoLS and replace with LPS
- Mental Capacity (Amendment) Bill 2017-2019 passed by parliament 2019.
- Liberty Protection Safeguards – new process of proper embedding the Mental Capacity Act at the beginning of the assessment process
- BIA – AMCP
- 16/17 year olds – children’s services / transition
- Independent hospitals – Local Authority in which they are living (not ordinary residence/commissioned by as in DoLS)
- Objection
- CCG/ Hospitals – do their own
- Code Of Practice – October 2019
- LPS implementation October 2020
- DoLS and LPS to run side by side for a year
- Assessments – Age, Mental Disorder, Necessarily and proportionate
- Section 12’s – replaced by GP’s – no additional resource.
- BIA – AMCP training – Local approach with ADASS MCA Lead

**A busy next 12-18 months for Local Authorities.**

# Finally

## Leaflets

- Your Rights
- Case Law – DoLS
- DoLS – easy read

Any questions?

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