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TLDR – Deprivation of Liberty applications concerning people with learning disabilities in England:  
Trends over time and geographical variation

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## Abstract

### Purpose

To analyse trends over time and geographical variation in Deprivation of Liberty Safeguards (DoLS) applications for adults with learning disabilities.

### Methodology

Secondary analysis of national and local authority level statistics collected and reported by NHS Digital.

### Findings

There has been a sharp national increase in the number of completed and granted DoLS applications regarding adults with learning disabilities since the 2014 'Cheshire West' Supreme Court judgement, with a greater proportion of completed DoLS applications being granted. There is extreme geographical variation across local authorities in England in the rates at which DoLS applications are being made and granted.

### Implications

The extreme variation in DoLS applications regarding adults with learning disabilities is highly unlikely to be a function of differences in mental capacity and living circumstances experienced by adults with learning disabilities across local authorities.

### Originality

This is the first paper to analyse geographical variation at local authority level for completed and granted DoLS applications regarding adults with learning disabilities.

## Introduction

Deprivation of Liberty Safeguards (DoLS) were introduced in England and Wales as an amendment to the Mental Capacity Act (2005), and are designed to provide due processes for determining, if a person lacks the capacity to make a particular decision, whether a deprivation of the person's liberty is in their best interests (Social Care Institute for Excellence, 2015) and is legal. Applications for deprivations of a person's liberty (typically from a service where a person is living or spending some time) have to be made to a local authority. Currently six assessments are required before a local authority makes a decision whether or not to authorise an application. Applications and authorisations can also be challenged in the Court of Protection (see Ministry of Justice, 2017). A DoLS application is 'completed' when a local authority has been through the DoLS procedures and made a decision to authorise the DoLS application (a 'granted' DoLS application) or not (a 'not granted' DoLS application). Where a local authority has not yet finished the process, according to national statistics this is an 'uncompleted' DoLS application.

A Supreme Court judgement in 2014 (known as the Cheshire West case; see Department of Health, 2015) applied an 'acid test' of two questions to consider when deciding if a person was being deprived of their liberty:

- 1) Is the person subject to continuous supervision and control, and
- 2) Is the person free to leave? The test being not whether a person seems to be wanting to leave, but what would people supporting the person do if they tried to leave.

This judgement was considered to have considerably widened the number of people and the circumstances under which Deprivation of Liberty Safeguards (DoLS) should apply. Before this ruling DoLS processes were only generally applied under certain circumstances when a person was in a care home or hospital. Subsequent sharp increases in the number of DoLS applications being made, including uncompleted DoLS applications (see Hatton et al., 2016), have resulted in a number of calls for DoLS procedures to be streamlined. Most substantively, the Law Commission has recently completed a consultation and new draft bill to change DoLS procedures (Law Commission, 2017).

This paper summarises information on Deprivation of Liberty Safeguards (DoLS) applications collected by NHS Digital concerning adults with learning disabilities in England, reporting on national trends over time and geographical variation across local authorities.

## Datasets

NHS Digital has been collecting statistics concerning Deprivation of Liberty Safeguards (DoLS) since 2009/10, reported in a series of annual reports (NHS Digital 2010, 2011, 2012, 2013, 2014, 2015, 2016).

Statistics concerning requests for such authorisation, and whether they were granted or not, are available for 2009/10 through to 2015/16. The recording of disability categories changed slightly after the first quarter of data collection in 2010/11. Before this time, disability categories were not mutually exclusive and more than one disability category could be entered; after this time only one disability category could be recorded.

The Supreme Court 'Cheshire West' judgement in 2014 has had a major impact on the number of DoLS applications and the capacity of local authorities to respond to them. Reflecting this, some of the data for 2014/15 and 2015/16 are not provided in ways that are comparable to previous years due to some concerns about the quality of the data.

National data are available in annual reports for 2009/10 through to 2015/16 (NHS Digital 2010, 2011, 2012, 2013, 2014, 2015, 2016). These data are used to present information on national trends over time.

In addition, in response to a data request from Public Health England, NHS Digital published supplementary information on the number of completed and granted DoLS applications in 2015/16, broken down by primary need for support and local authority (NHS Digital, 2017). This allowed the analysis of the number of completed and granted DoLS applications for adults with learning disabilities for each local authority in 2015/16, and these data are used to present information on variation across local authorities in DoLS applications in 2015/16. This dataset included information from 147 local authorities, with no DoLS data relating to adults with learning disabilities from Hampshire, Oxfordshire, North Yorkshire, South Tyneside and West Sussex. All numbers are rounded to the nearest 5, with numbers smaller than 5 not reported to avoid potential identification of individuals. Where numbers less than 5 are not reported, we have recoded these as zero for the purposes of analysis.

To take into account different population sizes of local authority, we calculated rates of completed and granted DoLS applications for adults with learning disabilities aged 18-64 years and 65 years or more per 100,000 age-matched general population for each local authority, using the Office for National Statistics population estimates analysis tool for mid-year 2015 (ONS, 2016).

## Results

This section first describes changes over time, and then moves on to describe geographical variation in completed and granted DoLS applications regarding adults with learning disabilities in England.

Table 1 shows data from NHS Digital national reports on the number of completed DoLS applications for adults with learning disabilities vs all other adults in England, from 2009/10 to 2015/16. For 2014/15 and 2015/16, data on the number of completed DoLS in England have not been broken down by primary support need in national NHS Digital reports. For 2015/16 a figure for completed DoLS applications for adults with learning disabilities has been derived from the supplementary data supplied by NHS Digital, although this is likely to be a slight underestimate of the total number of completed DoLS applications for adults with learning disabilities.

From 2009/10 to 2013/14, the total number of completed DoLS applications increased from 7,157 applications in 2009/10 to 13,398 applications in 2013/14. Regarding adults with

learning disabilities, the number of completed DoLS applications stayed reasonably stable over this time period (1,550 applications in 2009/10; 1,403 applications in 2013/14).

Following the 'Cheshire West' Supreme Court judgement in March 2014, the total number of completed DoLS applications increased dramatically, to 62,645 completed applications for all adults in 2014/15 and 105,055 completed DoLS applications in 2015/16, an increase of 684% from 2013/14 to 2015/16. The estimate from supplementary data reported 11,305 completed DoLS applications concerning adults with learning disabilities in 2015/16, a similarly sharp increase of 706% compared to 2013/14.

TABLE 1 ABOUT HERE

Table 1 also shows data from NHS Digital national reports on the number of granted DoLS applications for adults with learning disabilities vs all other adults in England, from 2009/10 to 2015/16. From 2009/10 to 2013/14, the overall number of granted DoLS applications increased from 3,297 granted DoLS applications in 2009/10 (46% of completed DoLS applications in that year) to 7,629 granted DoLS applications in 2013/14 (57% of completed DoLS applications in that year). Regarding adults with learning disabilities, the number of granted DoLS applications dropped over this time period, from 654 granted DoLS applications in 2009/10 (42% of completed DoLS applications for adults with learning disabilities in that year) to 576 granted DoLS applications in 2013/14 (57% of completed DoLS applications in that year).

Mirroring the sharp increase in completed DoLS applications after the Cheshire West judgement, the total number of granted DoLS applications also rose sharply in 2014/15 (to 52,195 granted applications) and again in 2015/16 (76,530 granted applications, an increase of 843% from 2013/14). By 2015/16, 63% of completed DoLS application were granted. The number of granted DoLS applications regarding adults with learning disabilities also rose sharply in 2014/15 (to 8,795 granted applications) and again in 2015/16 (to 10,055 granted applications, an increase of 1,646% from 2013/14).

Figure 1 presents, for each of the 147 local authorities where there was information in the NHS Digital supplementary analysis for 2015/16, the rates of completed and granted DoLS applications for adults with learning disabilities aged 18-64 years per 100,000 age-matched population, ordered by lowest to highest rates for completed DoLS applications.

As Figure 1 shows (the grey bars), there is extreme variation in the rates of completed DoLS applications for adults with learning disabilities aged 18-64 years. Eight local authorities (Tameside Metropolitan Borough Council, Knowsley Metropolitan Borough Council, London Borough of Hammersmith and Fulham, Westminster City Council, Corporation of The City of London, London Borough of Haringey, Bournemouth Borough Council, The Council of The Isles of Scilly) were reported to have zero or near zero rates of completed DoLS applications regarding adults with learning disabilities aged 18-64 years. In contrast, three local

authorities (Stockton-on-Tees Borough Council, Redcar & Cleveland Borough Council, Bedford Borough Council) reported rates of completed DoLS applications of more than 150 adults with learning disabilities aged 18-64 per 100,000 age-matched population. The median rate of completed DoLS applications was 25.96 per 100,000.

Figure 1 also shows (the black line) similar variation in the rates of granted DoLS applications for adults with learning disabilities aged 18-64 years. Eleven local authorities (the eight listed above with zero completed DoLS applications, plus Walsall Metropolitan Borough Council, Lancashire County Council and Rutland County Council) were reported to have zero or near zero rates of granted DoLS applications for adults with learning disabilities aged 18-64 years. The same three authorities reporting very high rates of completed DoLS applications also reported very high rates of granted DoLS applications. The median rate of granted DoLS applications was 25.21 per 100,000.

Overall, for adults with learning disabilities aged 18-64 years, 88% of completed DoLS applications in 2015/16 were granted. There was an almost perfect association between the rate at which DoLS applications were completed and granted across local authorities (Spearman's  $\rho=0.98$ ,  $n=147$ ,  $p<0.001$ ). For over a third of local authorities (55 authorities; 37%) all completed DoLS applications for adults with learning disabilities aged 18-64 were granted. As mentioned above eight local authorities were not reported to have any completed DoLS applications (and hence no granted applications), and three local authorities (Walsall, Lancashire and Rutland) had made a small number of completed DoLS applications with no granted DoLS applications. A further three local authorities (Dorset County Council, Devon County Council and Essex County Council) had made larger numbers of completed DoLS applications, with a 'success rate' of granted DoLS applications around the 50% mark.

FIGURE 1 ABOUT HERE

Figure 2 presents, in a similar format to Figure 1, the rates of completed and granted DoLS applications for adults with learning disabilities aged 65 years or more per 100,000 age-matched population, ordered by lowest to highest rates for completed DoLS applications.

As Figure 2 shows (the grey bars), there is extreme variation in the rates of completed DoLS applications for adults with learning disabilities aged 65 years or more. Almost a third of local authorities (47 authorities, 32%) were reported to have zero or near zero rates of completed DoLS applications regarding adults with learning disabilities aged 65 years plus. In contrast, four local authorities (London Borough of Wandsworth, London Borough of Richmond upon Thames Council, London Borough of Newham Council, London Borough of Hackney) reported rates of completed DoLS applications of more than 100 adults with learning disabilities aged 65 plus per 100,000 age-matched population. The median rate of

completed DoLS applications was 17.74 per 100,000 for adults with learning disabilities aged 65 plus.

Figure 2 also shows (the black line) similar variation in the rates of granted DoLS applications for adults with learning disabilities aged 65 years plus. Sixty-three local authorities were reported to have zero or near zero rates of granted DoLS applications for adults with learning disabilities aged 65 years plus. Three of the four authorities reporting very high rates of completed DoLS applications also reported very high rates of granted DoLS applications. The median rate of granted DoLS applications was 8.80 per 100,000.

Overall, for adults with learning disabilities aged 65 plus years, 74% of completed DoLS applications in 2015/16 were granted, lower than the rate for working age adults. There was a very strong association between the rate at which DoLS applications were completed and granted across local authorities (Spearman's  $\rho=0.90$ ,  $n=147$ ,  $p<0.001$ ). For almost a third of local authorities (44 authorities; 30%) all completed DoLS applications for adults with learning disabilities aged 65 plus were granted. As mentioned above 63 local authorities were not reported to have any completed DoLS applications (and hence no granted applications), and a further 16 local authorities had made a small number of completed DoLS applications with no granted DoLS applications.

FIGURE 2 ABOUT HERE

Local authorities with higher rates of completed and granted DoLS applications for adults with learning disabilities aged 18-64 years were more likely to report higher rates of completed and granted DoLS applications for adults with learning disabilities aged 65 years or more (completed DoLS  $\rho=0.68$ ,  $n=147$ ,  $p<0.001$ ; granted DoLS  $\rho=0.70$ ,  $n=147$ ,  $p<0.001$ ).

## Discussion

This paper summarises information on Deprivation of Liberty Safeguards (DoLS) applications for adults with learning disabilities in England, reporting on national trends over time and geographical variation across local authorities.

It is clear that the Cheshire West judgement has had a huge impact on the number of DoLS applications being made, including DoLS applications regarding people with learning disabilities. It is important to note that the statistics presented in this paper may be an underestimate of the total number of DoLS applications relating to people with learning disabilities, as they only concern completed DoLS applications. For example, in 2015/16 there were 195,840 DoLS applications in total, of which 105,055 (just over half, 54%) were completed (NHS Digital, 2016).

It is also apparent that, alongside these huge increases, a greater proportion of DoLS applications concerning adults with learning disabilities are being granted after the Cheshire West judgement than before (57% in 2013/14 vs 88% {adults aged 18-64} and 74% {adults aged 65+} in 2015/16). This

may reflect a more efficient DoLS process in the face of increasing volume, a change in scope such that uncontentious living arrangements are now subject to straightforward DoLS authorisations, or a DoLS authorisation system under pressure.

Alongside these sharp increases on DoLS applications, it is worth noting that increases in the numbers of challenges to DoLS applications/authorisations have also increased sharply (109 in 2013; 524 in 2014; 1,497 in 2015; 3,143 in 2016; an increase of 500% from 2014 to 2016; Ministry of Justice 2017).

As with other indicators concerning support services for people with learning disabilities (Hatton et al., 2016; Public Health England, 2017), there appears to be extreme geographical variation across local authorities in England in the scale of DoLS applications being completed and granted, with some large local authorities reporting very low rates of DoLS applications regarding people with learning disabilities and others reporting extremely high rates. Some of this variation may be due to issues in reporting DoLS applications to NHS Digital at a time when the DoLS system has rapidly expanded, differences in the extent to which different local authorities are completing DoLS applications in a timely way, or different patterns of local services where deprivation of people's liberty regularly occurs. However, it seems extremely unlikely that this variation is a function of the needs of local populations of people with learning disabilities. Investigating how different local authorities are operating DoLS procedures concerning people with learning disabilities is a matter of urgency.

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Table 1: Number of completed and granted DoLS applications for adults with learning disabilities and other adults in England: 2009/10 to 2015/16

	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
<b>Completed DoLS applications</b>							
Adults with learning disabilities	1,550	1,315	1,513	1,304	1,403	All adults: 62,645	All adults: 105,055 <sup>a</sup>
All other adults	5,607	7,667	9,880	10,583	11,995		
<b>Granted DoLS applications</b>							
Adults with learning disabilities	654	712	814	669	576	8,795	10,055
All other adults	2,643	4,239	5,529	5,877	7,053	43,400	66,475

a: Collating totals from individual local authorities in the supplementary dataset provided by NHS England gives a total of 11,305 completed DoLS applications for adults with learning disabilities. This is highly likely to be an underestimate of the total, due to 5 local authorities not being represented in the supplementary dataset and data rounding/suppression of very small numbers.

Figure 1: Completed and granted DoLS applications per 100-000 age-matched adult population for adults with learning disabilities aged 18-64 by local authority

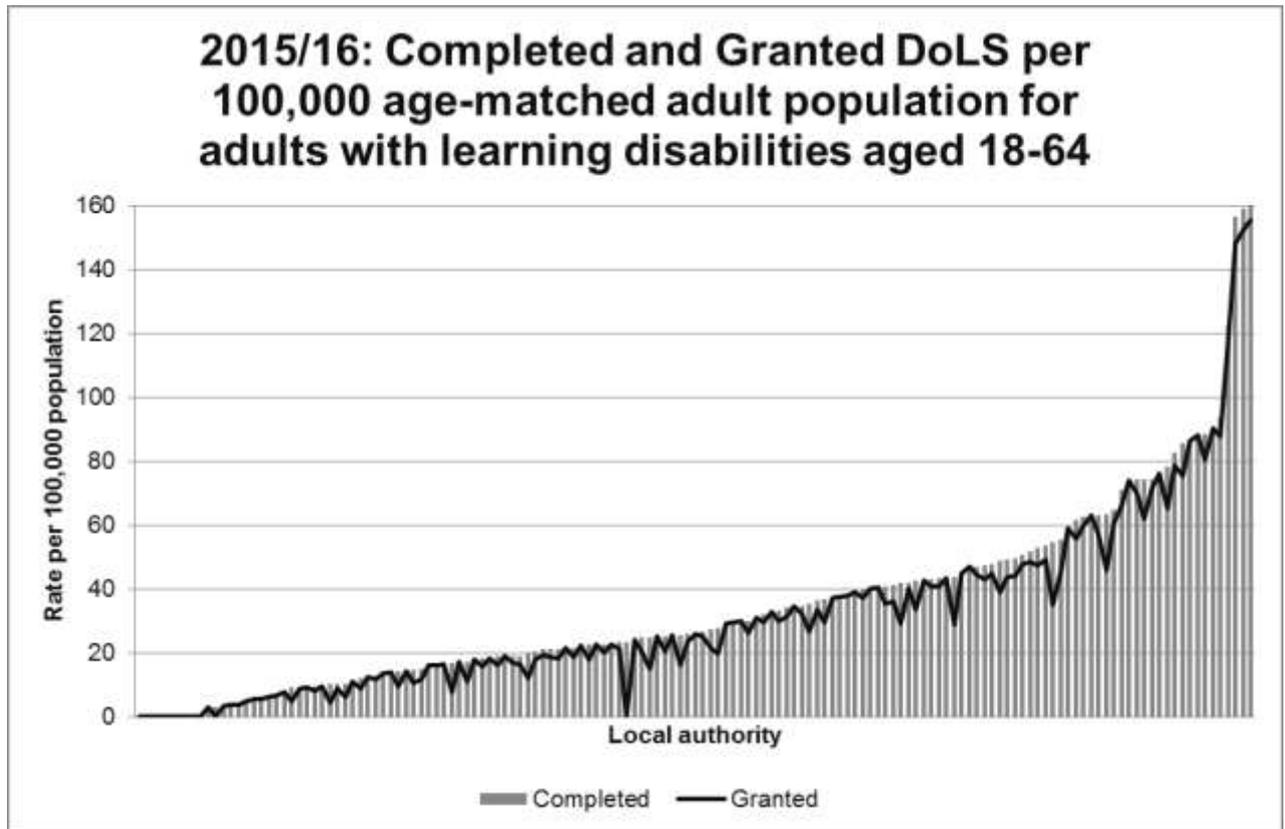


Figure 2: Completed and granted DoLS applications per 100-000 age-matched adult population for adults with learning disabilities aged 65 or more by local authority

