

Meeting of:	<b>Healthy Living and Social Care Scrutiny Committee</b>
Date of Meeting:	<b>Tuesday, 15 October 2019</b>
Relevant Scrutiny Committee:	Healthy Living and Social Care
Report Title:	Deprivation of Liberty Safeguards (DoLS)
Purpose of Report:	To provide overview and summary of the activity within the DoLS team. To highlight the resource and capacity issues that has resulted in this area of work being included on the corporate risk register.
Report Owner:	Director of Social Services
Responsible Officer:	Operational Manager, Safeguarding & Service Outcomes
Elected Member and Officer Consultation:	Cabinet Member, Social and Care Services Operational Manager, Accountancy Legal Services
Policy Framework:	This is a matter for Executive decision
Executive Summary:	<ul style="list-style-type: none"> <li>This report seeks to ensure effective scrutiny of activity and performance in relation to the Deprivation of Liberty Safeguards arrangements within the Vale of Glamorgan.</li> </ul>

## **Recommendations**

- 1.** That Scrutiny considers the continued implications for the Council of the Cheshire West judgement in respect of arrangements for Safeguarding adults who are unable to consent to their care and accommodation needs.
- 2.** That Scrutiny considers the associated risks to the Council through legal challenge where statutory timescales are not met.
- 3.** That Scrutiny considers the predicted impact for the Council of the implementation of the Mental Capacity (Amendment) Bill which will repeal the existing DoLS legislation with the Liberty Protection Safeguards (LPS).

## **Reasons for Recommendations**

- 1.** To ensure that Members are aware of the impact upon the Council of this judgement.
- 2.** To allow Members to consider the balance of risks to the Council through legal challenge as a result of it not meeting statutory timescales for authorising deprivations of liberty in respect of adults who are unable to consent to their care and accommodation needs.
- 3.** To ensure members are made aware of future changes to legislation and their anticipated impact.

## **1. Background**

- 1.1** The Cardiff and the Vale Deprivation of Liberty Safeguards/Mental Capacity Act (DoLS/MCA) Team continues to fulfil the Supervisory Body responsibilities required for DoLS on behalf of Cardiff and Vale UHB, Cardiff City Council and the Vale of Glamorgan Council. This is overseen by a partnership management board consisting of senior representatives from each Supervisory Body. This partnership board meets on a quarterly basis.
- 1.2** The Team co-ordinates DoLS assessments as requested by Managing Authorities by ensuring that the appropriate criteria requirements are met when depriving an individual of their liberty, in line with the Mental Capacity Act 2015.
- 1.3** The team acts and supports health and social care teams across the sector in relation to MCA/DoLS issues.
- 1.4** The team also provides training for care homes and all in-patient hospital sites across Cardiff and the Vale of Glamorgan.
- 1.5** The team is based in the Vale of Glamorgan and comprises:
  - 1 full time DOLS/MCA Co-ordinator (Manager)
  - 3 full time Best Interest Assessors (37 hours)
  - 1 part time Best Interest Assessor (30 hours)
  - 1 part time Best Interest Assessor (22.5 hours)

- 2 part time Best Interest Assessors (18.5 hours)

**1.6** During 2018/19 the team received the following number of applications from Managing Authorities (broken down by type and supervisory body) :

	Urgent	Standard	Review	Further	Total
VoG	58	625	7	119	809
Cardiff	166	1014	8	206	1394
C&VUHB	973	389	9	131	1502
Total					3705

**1.7** Of the applications above, 818 were subsequently withdrawn by the Managing Authorities. Applications are withdrawn for various reasons including a move of individuals from the setting or the death of the individual.

**1.8** The team completed 1035 assessments with subsequent authorisations provided, and 1095 applications were outstanding at the end of this period.

## **2. Key Issues for Consideration**

**2.1** There remains a significant backlog in relation to the authorisation of DoLS applications, however, the co-ordinator of the team utilises the agreed national prioritisation of applications.

**2.2** The DoLS framework is expected to be replaced by a new scheme known as the Liberty Protection Safeguards (LPS). LPS will provide a streamlined process for authorising deprivations of liberty. Under the LPS, the 'responsible body' for authorising a deprivation of liberty depends upon where the 'cared-for' person is residing. This new framework will require a review of the current governance and structure of the DoLS team. Codes of Practice are currently being drafted and once published, likely April 2020, work will be completed to ensure compliance with the new framework. The new LPS is due to come into force in October 2020.

## **3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?**

**3.1** Long Term – We continually balance the short term demands of the team with the need to safeguard our ability to meet long term demands.

**3.2** Prevention – Considering the issues that impact on resources and capacity so that we prioritise our responsibilities and objectives.

**3.3** Collaboration – The team undertakes the supervisory body responsibilities on behalf of neighbouring authority and local health board.

## **4. Resources and Legal Considerations**

### **Financial**

- 4.1** The Supervisory Bodies are at risk of legal challenge for not complying with the statutory timescales within the DoLS process. There have been no previous cases where damages have been applied for within the Vale of Glamorgan. There have been cases nationally where cases for damages have been brought and awarded.
- 4.2** Whilst we know the DoLS framework for depriving a person of their liberty will be replaced with the new LPS system, we do not know what impact this may have on the current resources aligned to the team and what degree of changes this will bring about.

### **Employment**

- 4.3** None.

### **Legal (Including Equalities)**

- 4.4** Article 5 of the European Convention on Human Rights states that 'Everyone has the right to liberty and security of person,' and that 'No one shall be deprived of his liberty', save for criminal proceedings and under the Mental Health Act 1983.
- 4.5** The Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards set out the legal framework whereby the local authority can authorise care arrangements that deprive a mentally incapacitated adult of their liberty as long as the care is in the person's best interests and action should not otherwise be undertaken under the Mental Health Act 1983.
- 4.6** In the absence of a DoLS authorisation, care that deprives a person who cannot consent to the arrangement is unlawful.

## **5. Background Papers**

None