

Meeting of:	Healthy Living and Social Care Scrutiny Committee
Date of Meeting:	Tuesday, 09 November 2021
Relevant Scrutiny Committee:	Healthy Living and Social Care
Report Title:	Deprivation of Liberty Safeguards
Purpose of Report:	To provide overview and summary of the activity within the DoLS team. To highlight the resource and capacity issues that have 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 Care & Health.
Policy Framework:	This is a matter for Executive decision
Executive Summary:	<ul style="list-style-type: none"> 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.

Recommendations

1. That Scrutiny considers the continued implications of the Cheshire West judgement in respect of arrangements for Safeguarding adults who are unable to consent to their care and accommodation needs.
2. In July 2018, the Government published a Mental Capacity (Amendment) Bill which will see DoLS replaced by the Liberty Protection Safeguards (LPS). Under LPS, there will be a streamlined process for authorising deprivations of liberty.
3. That this report is referred to Audit Committee for their consideration.

Reasons for Recommendations

1. That Scrutiny notes the continued implications of the Cheshire West judgement in respect of arrangements for Safeguarding adults who are unable to consent to their accommodation and care and support arrangements and the risk to the Council of legal challenge where statutory timescales are not met.
2. Scrutiny takes account of the future planning for the Liberty Protection Safeguards and changes this will bring in our responsibilities for individuals who are deprived of their liberty through their care and support needs.
3. To update members on the progress made with the backlog of applications and the expected legislative changes.

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 2005.
- 1.3 Advises and supports health and social care teams across the sector in relation to MCA/DoLS issues.
- 1.4 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 Coordinator (Manager)
 - 1 full time administrator
 - 3 full time Best Interest Assessors (37 hours)
 - 1 part time Best Interest Assessors (30 hours)

- 1 part time Best Interest Assessor (22.5 hours)
 - 2 part time Best Interest Assessors (18.5 hours)
- 1.6** In response to the COVID-19 pandemic the activity of the team moved to remote assessment in response to the public health risks, this was supported by guidance from Welsh Government. The team has worked in collaboration with settings such as residential care homes to support this process and take account of the communication needs of individuals involved in the DoLS process.

2. Key Issues for Consideration

- 2.1** The Liberty Protection Safeguards are due to replace the DoLS in England and Wales, in April 2022. They represent a significant overhaul to the law concerning the care and treatment of people over 16 who lack capacity to consent to care or treatment that deprives them of their liberty. Workers across the adult social care system will need to prepare for the LPS: the changes will affect direct work with adults, and in some cases young people, carried out by multi-agency practitioners and will require new systems and ways of working at all levels across these organisations.
- 2.2** In preparation of the new LPS we were successful in our bid for additional funding from Welsh Government to address the backlog of applications. A small project team was put together and significant progress has been made in reducing our backlog of applications. The current number of applications for Vale of Glamorgan awaiting consideration is 98 and the longest time waiting is from April 2021
- 2.3** The table below demonstrates backlog of applications for Vale of Glamorgan in previous years:

2017/18	439
2018/19	488
2019/20	329
2020/21	322
April 2021 – present	98

There has been significant effort and work to reduce the backlog of applications in order to position the team effectively to manage the transition from DoLS to LPS.

- 2.4 It is anticipated that the LPS framework will be implemented in April 2022, and that there will be a 12-month transition period where the previous DoLS processes will work alongside the new LPS. However, we await the Codes of Practice in order to make the necessary operational and strategic changes that may be required.
- 2.5 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.

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 We know the DoLS framework for depriving a person of their liberty will be replaced with the new LPS system. We are currently mapping areas to understand how we respond to this and impact this may have on the current resources aligned to the team.

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 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** Unauthorised care that deprives a person who cannot consent to the arrangement is unlawful.

5. Background Papers

Reports to Healthy Living and Social Care Scrutiny Committee: 15th October, 2019 and 11th September, 2018.