

THE VALE OF GLAMORGAN COUNCIL

GOVERNANCE AND AUDIT COMMITTEE: 11TH DECEMBER, 2023

REFERENCE FROM HEALTHY LIVING AND SOCIAL CARE SCRUTINY
COMMITTEE: 9TH OCTOBER, 2023

“420 DEPRIVATION OF LIBERTY SAFEGUARDS TEAM ANNUAL UPDATE
(DSS) –

The Head of Resource Management and Safeguarding, supported by the Operational Manager for safeguarding service outcomes, presented the report which provided an overview and summary of the activity within the DoLS (Deprivation of Liberty Safeguards) team. It also highlighted the resource and capacity issues that had resulted in the area of work being included on the Council’s corporate risk register.

The Cardiff and the Vale Deprivation of Liberty Safeguards/Mental Capacity Act (DoLS/MCA) Team continued to fulfil the Supervisory Body responsibilities required for DoLS on behalf of Cardiff and Vale Health Board, Cardiff City Council and the Vale of Glamorgan Council. This arrangement was overseen by a partnership management board, currently chaired by the Operational Manager for safeguarding and service outcomes from the Vale of Glamorgan Council, consisting of senior representatives from each Supervisory Body.

The Liberty Protection Safeguards had been due to replace the DoLS legal framework in England and Wales during 2022/23. However, on the 5th April 2023, Welsh Government had advised that the proposed introduction of Liberty Protection Safeguards had been postponed indefinitely. Prior to this announcement proposals were being considered to change the operating model of the team. These proposals would no longer progress however, the team structure would be reviewed to ensure maximum efficiency and effectiveness of the service during 23/24.

The table set out in paragraph 2.2 of the report demonstrated the number of instances whereby an urgent authorisation was utilised by a Managing Authority During 2022/23. The health board utilised the urgent application process significantly more than the two councils. This was due to the nature of the health setting and the presenting needs of the individual who may be admitted to hospital and the deprivations that could be put in place whilst assessment and treatment was taking place.

Paragraphs 2.4 – 2.6 of the report set out the distinct types of authorisation requests meaning that the Council had between 7 and 21 days to complete.

The Head of Service added that the Council continued to see a rise in the number of applications being received year on year, paragraphs 2.8 – 2.10. During the planning phases of the proposed new framework (Liberty Protection Safeguards) additional

annual funding was received from Welsh Government to address backlog of applications. This had a positive impact on being able to assess applications and backlogs had significantly decreased (226 down to 83) by the end of the last financial year.

The partners remained at risk of legal challenge in respect of not complying with statutory timescales. The Council had not received legal challenge within the region to date, but it still remained an area of priority, therefore the team continued to focus on reducing the backlog and the matter remained on the Council's corporate risk register.

With no comments or questions raised, the Committee subsequently

RECOMENDED –

- (1) T H A T 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, be noted.
- (2) T H A T the planned implementation of the Liberty Protection Safeguards and associated codes of practice, having been indefinitely postponed by Welsh Government, be noted.
- (3) T H A T the report be referred to the Council's Governance and Audit Committee.

Reasons for recommendations

- (1) Having regard to the contents of the report on the continued implications of the Cheshire West judgement in respect of arrangements for Safeguarding adults who are unable to consent to their accommodation, care and support arrangements and the risk to the Council of legal challenge where statutory timescales are not met.
- (2) Scrutiny Committee takes account of the future planning for the Liberty Protection Safeguards and changes this will bring in the Council's responsibilities for individuals who are deprived of their liberty through their care and support needs.
- (3) To update Members of the Governance and Audit Committee on the progress made with the backlog of applications and the expected legislative changes."

Attached as Appendix – Report to Healthy Living and Social Care Scrutiny Committee: 9th October, 2023

Meeting of:	Healthy Living and Social Care Scrutiny Committee
Date of Meeting:	Monday, 09 October 2023
Relevant Scrutiny Committee:	Healthy Living and Social Care
Report Title:	Deprivation of Liberty Safeguards Team Annual Update
Purpose of Report:	To provide overview and summary of the activity within the DoLS (Deprivation of Liberty Safeguards) 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 report is consistent with the Policy Framework and Budget
<p>Executive Summary:</p> <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 the Healthy Living and Social Care Scrutiny Committee 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. Scrutiny Committee has awareness that Government has announced the planned implementation of the Liberty Protection Safeguards and associated codes of practice, have been indefinitely postponed.
3. That this report is referred to Audit Committee for their consideration.

Reasons for Recommendations

1. That Scrutiny Committee 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 Committee 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 Cheshire West Supreme Court judgement in 2014 introduced a new acid test in deciding whether an incapacitated adult is being deprived of their liberty which comprises of two key questions. Is the person subject to continuous supervision and control? Is the person free to leave? The judgement effectively lowered the threshold for what constitutes deprivation of liberty in care. The ruling expanded human rights safeguarding to a broader vulnerable group of people.
- 1.2 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 Health Board, 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.
- 1.3 The team co-ordinates DoLS assessments as requested by Managing Authorities (care homes or hospitals) by ensuring that the appropriate criteria requirements are met when depriving an individual of their liberty, in line with the Mental Capacity Act 2005 and associated codes of practice.

- 1.4** The team acts as a ‘critical friend’ by providing advice and support to health and social care teams across the sector in relation to MCA/DoLS issues.
- 1.5** The team provides training for care homes and in-patient hospital sites across Cardiff and the Vale of Glamorgan.
- 1.6** The team is based in the Vale of Glamorgan and comprises:
- 1 full time DOLS/MCA Coordinator (Manager)
 - 1 full time administrator
 - 7 full time Best Interest Assessors
- 1.7** The team is funded via an agreed percentage split as follows:
- Cardiff Council – 41%
 - Vale of Glamorgan Council – 14%
 - Cardiff & Vale Health Board – 45%

This funding formula is currently subject to review. Each partner funds full costs of specific services that relates to their individual supervisory body functions such as S.12 doctors and professional relevant persons representatives.

- 1.8** During the COVID-19 pandemic the team continued to operate, undertaking all meetings via virtual platforms. 2022/23 saw a return to the team's pre-pandemic operating model whereby most of the contact is taking place face to face.

2. Key Issues for Consideration

- 2.1** The Liberty Protection Safeguards had been due to replace the DoLS legal framework in England and Wales during 2022/23. Government has advised that the proposed introduction of Liberty Protection Safeguards has been postponed indefinitely. Prior to this announcement proposals were being considered to change the operating model of the team. These proposals will not progress however, during 23/24 the team structure will be reviewed to ensure maximum efficiency and effectiveness of the service. This will include the development of data analysis from the business intelligence team.
- 2.2** The table below demonstrates the number of instances whereby an urgent authorisation* was utilised by a Managing Authority During 2022/23:

2022/23	Urgent Applications
Cardiff Council	55
Vale of Glamorgan Council	45
Cardiff & Vale UHB	1039

**An urgent authorisation is the process whereby the Managing Authority can apply a legal seven-day deprivation of a person’s liberty whilst awaiting a standard authorisation.*

You will note that the health board utilises the urgent application process significantly more than the two councils. This is due to the nature of setting and the presenting needs of the individual who may be admitted to hospital and the deprivations that are put in place whilst assessment and treatment is taking place. In several instances, individuals will recover capacity during this period.

2.3 The table below demonstrates the number of applications made to the team for each supervisory body during 2022/23:

Applications	
Cardiff & Vale UHB	1072
Vale of Glamorgan Council	541
Cardiff Council	1247
Total Received	2860

The applications are made up of distinct types of authorisation requests:

Urgent, Standard, Further. The legal framework requires managing authorities to request a standard authorisation from the Supervisory Body in advance of a DoLS commencing, where possible.

2.4 A **Standard** request means that the care home or hospital believes that the person is unable to make the decision about residing with them but they are not objecting to staying there. We have 21 days to carry out this assessment. If all criteria are met we give an authorisation. (The Authority to keep the resident in the care home or hospital, timescales are up to a year depending on circumstances).

2.5 A **Further** request is a new request for the same person. When an existing DoLS Authorisation is coming to an end, the managing authority (care home or hospital) must review whether it is still necessary. A further authorisation request should be made if the managing authority concludes that this is still necessary, having reviewed the person’s current situation. We have 21 days to carry the assessment out.

2.6 An **Urgent** request is where the care home or hospital gives themselves an authorisation for 7 days (we only have 7 days to carry out the assessment). In these cases the resident or patient is either objecting to the placement or the restriction within their care plan are high (sensor devices, 1:1 support etc).

2.7 There will also be instances where applications are made, and these are subsequently withdrawn due to a range of changes in circumstances for the

individual i.e., they regain capacity, the deprivation of liberty is no longer in place, or the individual dies.

- 2.8** We continue to see a rise in the number of applications being received year on year. During the planning phases of the proposed new framework (Liberty Protection Safeguards) additional annual funding was received from Welsh Government to address backlog of applications. This had a positive impact on being able to assess applications and backlogs have significantly decreased. Welsh Government has agreed ongoing funding for 23/34. Given the current financial climate we have not been given confirmation that this additional funding will be available for 24/25. There would be significant implications on our ability to meet the demands if funding were not continued.
- 2.9** The capacity and resource of the team to meet demand had been reviewed previously in response to the previously planned changes to the new legal framework. Whilst Liberty Protection Safeguards have been indefinitely put on hold, we have refocused and will be undertaking a business planning review in 23/34 of the team and its activity. We are reviewing the current funding agreements from the three supervisory bodies to identify if this is at a level that reflects the applications being made; the management structure within the DOLS team; the business support functions and developing a new data framework that will enable effective analysis and oversight by the three supervisory bodies.
- 2.10** The table below shows the number of outstanding applications at the end of 22/23, and three previous years end of year backlog to demonstrate the impact additional funding has had on the team’s ability to meet the applications being submitted.

	2019/20	2020/21	2021/22	2022/23
Cardiff & Vale UHB	85	54	56	9
Cardiff Council	975	542	137	52
Vale of Glamorgan Council	329	287	33	21

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. Climate Change and Nature Implications

- 4.1** There are no climate change and nature implications as a direct result of this report.

5. Resources and Legal Considerations

Financial

- 5.1** 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.
- 5.2** A review of the current funding agreements and team structure is taking place. The outcome of this review will identify whether there are additional resources required within the team.

Employment

- 5.3** There are no employment considerations at this time although that may change if the grant allocation changes in the future.

Legal (Including Equalities)

- 5.4** 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.
- 5.5** 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 if the care is in the person's best interests and action should not otherwise be undertaken under the Mental Health Act 1983.
- 5.6** Unauthorised care that deprives a person of their liberty, who cannot consent to the arrangement is unlawful.

6. Background Papers

4th October 2022 – Deprivation of Liberty Safeguards (DoLS) Annual Update