



Committee report

Committee **POLICY AND SCRUTINY COMMITTEE FOR ADULT SOCIAL CARE AND HEALTH**

Date **19 MARCH 2018**

Title **DEPRIVATION OF LIBERTY SAFEGUARDS**

Report of **COUNCILLOR CLARE MOSDELL / DR CAROL TOZER**

SUMMARY

This report outlines the progress made against the present project to reduce the backlog of DoLS within Adult Social Care, (ASC).

BACKGROUND

1. INTRODUCTION

The Mental Capacity Act and Deprivation of Liberty Safeguards provide a statutory framework for making decisions on behalf of people who lack the mental capacity to do so, including to authorise the deprivation of liberty in care homes and hospitals. In 2014, the Supreme Court issued a formal definition of ‘deprivation of liberty’ (*the acid test*), which resulted in a significant increase of applications for Managing Authorities under the DoLS. In short, the newly defined definition greatly reduced the threshold for those people who would be deemed to be deprived of their liberty under restrictive conditions.

In line with other Local Authorities, (Supervisory Bodies) the Isle of Wight Council has had insufficient capacity to manage these increased requests and as a result a backlog of requests has built up. As at 31 January 2018 the backlog is:

Total number of outstanding assessments by date of application	2014-15	84
	2015-16	164
	2016-17	189
	2017-18	304
		741

These break down into the following priority groups as defined by the Local Government Association Guidelines, (LGA)

Priority	Count @ 30/11/17	
1	16	(16 currently under assessment)
2	111	(25 currently under assessment)
3	614	(36 currently under assessment)
Total	741	(77 under assessment)

Funding has been identified within Adult Social Care to address these outstanding DoLS requests and Counsel's advice was sought to inform the best approach to developing a project.

2. LIABILITY ISSUES

As noted in the previous Scrutiny report the council is working to counsel's advice via an informed plan to address the outstanding backlog.

Following the implementation of the project and with a significant number of assessments already in progress particularly targeted at the high priority cases - no issues of liability for compensation have arisen to date. A further national review of case law has identified that there have been no substantial financial payments made on the grounds of inappropriate deprivation of liberty. It would appear that the Courts are recognising that the premise of the legalisation is flawed and the Courts and Official Solicitor are keen not to be overburden with inappropriate litigation.

Any cases that are identified as having potential challenge are brought to the DoLS working group, (which presently meets weekly) for immediate consultation. There are clear and regular communications with the commissioned service – OT Practice.

3. STRATEGY FOR ADDRESSING THE BACKLOG

The Isle of Wight Council will address the DoLS backlog in two parts:

- (1) To increase capacity to manage new requests coming in a
- (2) To commission an external provider to complete outstanding historic requests.

3.1. Managing new requests

3.1.1. A fixed term contract as Best Interests Assessor started on 1 February 2018 for an 18 month period bringing the capacity to 3 WTE. An internal secondment to cover the Consultant Practitioner, (who has taken-up DoLS management project duties appropriate to the role of Consultant Practitioner, is expected to start on 5 March.

3.1.2. All newly qualified BIA qualified Social Care Practitioners have now started undertaking assessments, initially shadowed by experienced BIA.

3.1.3. A further training course is being finalised with Brighton University April 2018 for a cohort of 11 staff; candidates will qualify and start assessments from 1 July 2018.

3.1.4. Performance of all BIAs will be monitored with ongoing training to reduce the time to complete assessments. A performance expectation that full time BIAs will complete between 10 and 12 assessments per month based upon complexity. BIA assessors not with the DoLS Team will be expected to complete 1 assessment every 4 – 6 weeks on a rota basis.

3.2. Backlog Reduction Plan

3.2.1. **Out of area placements:** all assessments have now been completed by Action First, reports received and authorisations will be completed by 2 March 2018.

3.2.2. **IW Council managed care homes:** The Isle of Wight Council manages 8 care homes for people with learning disabilities. DoLS requests have been made in respect of 37 residents.

- Of these 22 have been completed, 16 authorised, 2 not granted (had capacity), 4 had left the home.
- Of the outstanding requests all Mental Health Assessor reports have been received and BIA reports are awaited for 10. Five are in process for authorisation
- DoLS authorisations for all will be completed by 9 March 2018.

3.2.3. **Other outstanding requests:** The procurement process to appoint an agency to undertake outstanding assessments was completed within the agreed timescales and a contract has been agreed with the Company **OT Practice** on 7 February 2018.

- This procurement achieved a very favourable price, (£460 per assessment) which will enable up to 480 assessments to be completed within the available funding.
- All high and medium priority requests have been transferred to the OT Practice and assessments are underway from 19 February. This first phase of assessments will be completed within 4 weeks.
- The authoriser role has been evaluated at Grade 11 (the lowest level to which the work is delegated in ASC). Authorisation of the cases arising from the project will be offered to internal authorisers as additional hours (2 hours at Grade 11 per case) and if necessary additional capacity will be recruited from experienced DoLS assessors outside the Council.

The table below shows the numbers of assessment undertaken and completed as of 7 March 2018.

No. of Cases	Batch 1 High Priority	Batch 2 Medium Priority	Total
Sent to OT Practice	93	161	254
Not Allocated	1	140	141
Under Assessment	15	0	15
Assessment Completed – with OT Practice QA	70	7	77
Documents waiting for IWC processing (authorisation)	6	14	20
Process Completed	0	0	0
Cases Rejected (no charge)	1	0	1
TOTAL	93	161	254

4. COSTINGS

In addition to the MCA/DoLS base budget additional funding has been made available for the financial year 2017-18 to begin addressing the backlog of DoLS cases. Provisional budget plan:

Funding allocation		£ 290,000
Committed:		
<i>BIA backfill for CP</i>	£ 20,000	
<i>Out of area assessments</i>	£ 15,065	
<i>In house Care Homes</i>	£ 18,000	
<i>Authorisations</i>	£ 15,000	
<i>Admin</i>	£ 4,500	
Total Committed		£ 72,565
Balance available for assessments		£ 217,435

The project will generate a significant increase in demand for Independent Mental Capacity Advocates and paid Representatives, which are provided by Southern Advocacy Services. Additional funding of £30,000 per year has been identified and will be allocated to cover this additional expense, which is beyond the scope of the agreed contract.

Contact Point: Stephen Ward, MHA and MCA Lead ☎ 534098
stephen.ward@iow.gov.uk

Dr CAROL TOZER
Director of Adult Social Services

CLLR CLARE MOSDELL
Cabinet Member for Adult Social Care and
Community Well-being