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WIGHT
COUNCIL

Deprivation of Liberty Safeguards (DoLS) IWC-21-22-040

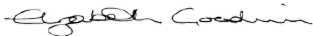
Limited Assurance

Author Amy Pyner, Internal Auditor

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Recipient(s) Wendy Perera, Interim Chief Executive; Laura Gaudion, Director Adult Social Care; Mark Howe, Assistant Director; Maria Blazekova, Service Manager; Ginny Smith, Group Manager - DoLS,

Approved by Elizabeth Goodwin, Chief Internal Auditor 

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Executive Summary

The Deprivation of Liberty Safeguards (DoLS) are a provision of the Mental Capacity Act enacted in April 2009. When a care home or a hospital (Managing Authority) believes that it is necessary for a person to be deprived of their liberty in order to give them care or treatment, they must apply to their local authority (the Supervisory Body) to authorise this.

The Supreme Court judgement of 19 March 2014 in the case of Cheshire West clarified an 'acid test' for what constitutes a deprivation of liberty. The court found that an individual is deprived of their liberty if all three of the following elements are present:

- They lack the capacity to consent to their care/ treatment arrangements.
- They are under continuous supervision and control.
- They are not free to leave.

The Isle of Wight Council DoLS team must commission all required assessments, scrutinise their content and, when in agreement, authorise applications. Authorisations can be put in place for a maximum of one year and need to be reviewed and renewed if they are required for a longer period. The DoLS Code of Practice prescribes timescales for the completion of assessments. During the Covid-19 period, assessments continued to take place, however, these were conducted remotely where possible (based on the professional judgement of the assessors using the basis for referral). Since 2016, the local demand for DoLS assessments averages 710 per year. Nationally, since 2014, applications have increased each year by 13.9%.

Compliance with Policies, Laws and Regulations

Limited Assurance

Two High Risk, One Medium Risk and One Low Risk exceptions have been raised under this heading.

Availability of Policies and Procedures

The DoLS Code of Practice recommends that Supervisory Bodies have 'documented procedures' in place which detail the administrative process to be followed. The published DoLS policy (2015), equality impact assessment (2015) and flowchart (2018) have become out of date. New versions are currently in progress and are nearing completion. (Low Risk Exception 1).

Compliance with Timescales for Processing DoLS Applications

During 2020-21, the service received a total of 795 applications; 61.6% of these were marked as urgent, with 38.4% being standard (Source: NHS Digital). Audit testing has found low levels of compliance regarding the timeliness of processing applications, (High Risk Exception 2).

Review of the DoLS Code of Practice established the following statutory timescales for the administration of DoLS referrals:

- Urgent authorisations should only be in place for seven calendar days, with a standard assessment and authorisation completed within this time. A further extension of seven days can be applied.

- Standard authorisations should be processed within 21 calendar days.

Data for referrals between 1st April 2021 to 11th October 2021 was analysed to ensure that the service is meeting its obligations for timely authorisation. 448 referrals had been received during this period, with 83 authorisation dates recorded against this population (19% of the population had been authorised).

NHS Digital statistics show the proportion of standard applications completed within the statutory timeframe nationally was 24% in 2020-21, whilst the average length of time for all completed applications was 148 days. Locally, assessments completed within the statutory timeframe is below the national average, audit testing concluded this figure to be 5%, only two urgent and two standard applications had been approved within statutory timescales. However, testing did find that the overall average length of time to complete assessments was considerably better than the national average, at 63 days. Only one application was found to exceed the national average, whilst 50% of the population fell within 56 and 103 days.

As is the case nationally, the ongoing delays to complete assessments and inability to meet demand has resulted in a waiting list. Ongoing triage and monitoring takes place with the waiting list being tackled in conjunction with new applications, this impacts on the time available to process new requests and has contributed to the non-compliance with timescales outlined in the testing above. The current triage method is the nationally accepted ADASS model which prioritises cases on person centred risks and needs rather than to prescribed timescales.

Authorisations

No exceptions have been raised relating to authorisations.

Sample testing of 10/83 (12%) authorised DoLS took place. Testing sought to ascertain levels of compliance with the following controls:

- The duration of the DoLS does not exceed 12 months and is no longer than recommended by the Best Interest Assessor.
- A Relevant Persons Representative (RPR) is appointed.
- All assessments are in place; with a segregation of duties between the Mental Health Assessment and the Best Interests Assessment.

Sample testing confirmed that all cases were compliant with the above. Additionally, all cases had detailed decision making evidence recorded, and the authorisation had been granted by an Officer who had not conducted either the Mental Capacity or Best Interest Assessments, in compliance with the DoLS code of practice.

Data Monitoring

One high risk exception has been raised relating to the waiting list of 503 applications, which is a significant risk for the service. Whilst interventions have taken place to reduce the waiting list, there is no documented strategy or action plan which sets out how this can be addressed in its entirety. (High Risk Exception 3).

Data is collated and reported monthly to ASC Leadership. The monthly data monitoring report was found to be clear and well presented, however, it omits to specify compliance with timescales by not clearly demonstrating in year authorisations vs referrals, instead presenting cumulative data covering all years with outstanding referrals.

Most significantly, the data monitoring information demonstrates a waiting list of 503 applications, dating back to financial year 2019-20.

At September 2021:

- 80 outstanding for 2019-20
- 194 outstanding for 2020-21
- 232 overdue for the current year to date

The Isle of Wight is not unique in holding a long pending list and was placed in the 51st to 75th percentile for the number of applications not completed in England. NHS Digital estimates the waiting list, reported as 500 in March 2020, would take eight months to clear (based on 2020-21 authorisation numbers), this exceeds the national average of 5.9 months.

Internal Audit has been presented with papers dating back to 2019. ASC Leadership have regularly been made aware of the implications, costs, projections and available strategies to tackle this issue. As such, a range of actions to address the waiting list have taken place including use of agency support, team restructuring and additional staffing. The budget continues to be increased and in October 2021, posts were advertised to support the team further.

Commissioning of Assessments

There is no documented pay framework for assessments and a lack of transparency in the allocation of assessments (Medium Risk Exception 4).

Analysis of payments to four vendors found payments for assessments varied by vendor, between £180 and £250 per assessment with some assessors also being paid travel expenses. Currently, the service operates on a 'spot purchase' method to select and allocate assessors. Internal Audit could not identify a documented or consistent method for the selection of assessors. Prior to the Internal Audit review, payments to one assessor were found to have exceeded a procurement threshold of £10,000. The DoLS Group Manager is currently working with the Procurement Team to regularise these types of payment and develop an appropriate pay framework.

In the absence of a formal framework, Internal Audit examined the recruitment screening and training records held for the external assessors. Three out of six S12 doctors (50%) and seven out of eleven Best Interest Assessors (64%) records were assessed to ensure they were qualified and met all criteria to complete the roles. Full compliance was found, with all being subject to the provision of current insurance, ongoing professional membership, two years post qualifying experience, annual refresher training and a DBS check.

Safeguarding of Assets

Reasonable Assurance

One medium risk exception is raised under this heading.

Data Storage

Testing relating to the external assessors' records found that full DBS certificates and superseded information is retained which is not compliant with GDPR principles. The Group Manager has arranged for a meeting with HR to regularise the information stored. (Medium Risk Exception 5).

Effectiveness and Efficiency of Operations

Assurance

No exceptions are raised under this heading.

Budget Monitoring

The DoLS budget for 2021-22 is £508,761, plus a £250,000 contingency (total budget £758,761). Routine budget monitoring takes place. The Senior Accounting Technician for the service expects an underspend in the region of £40,000 this financial year. The service was successful in agreeing a carry forward of previous year underspend to support work towards the waiting list. It is very likely this will be continued for any underspend in the current year. The service has requested an additional £250,000 to support the recruitment of an extra BIA and Consultant Practitioner (At the time of auditing, it is noted these vacancies are currently advertised).

Completion of the Audit

Limited Assurance

Further to the supreme court judgement in 2014, referrals for DoLS assessments increased considerably. This has presented itself locally in a year-on-year increase to the waiting list as supply cannot meet demand. The recurring requirement for DoLS means that even completed assessments will usually require further intervention within a one-year period. Internal Audit has established that whilst movement takes place to reduce the waiting list, this is at the expense of prioritising low-risk new referrals, and as such, delivery to timescale is scarce.

Of the authorisations reviewed however, Internal Audit is satisfied that assessments are conducted by appropriately qualified and suitable personnel, are well recorded within designated systems and meet the professional approval standards of the authoriser. Five exceptions have been raised.

Please be aware that summaries of all exceptions are routinely reported to the Audit Committee who may call in any Audit report they wish. Where any critical exceptions are found and/or the audit receives an overall level of 'Limited Assurance' or less, these will be reported in their entirety to the Audit Committee along with the director's comments. These exceptions may also be reported to the relevant portfolio holder.

Assurance Levels

The overall assurance is given on the activity that has been audited.

These levels are based on the areas tested within the audit as noted with the Objectives & Scope.

Levels	Description / Examples
Assurance	No issues or minor improvements noted within the audit but based on the testing conducted, assurance can be placed that the activity is of low risk to the Authority.
Reasonable Assurance	Control weaknesses or risks were identified but overall the activities do not pose significant risks to the Authority.
Limited Assurance	Control weaknesses or risks were identified which pose a more significant risk to the Authority.
No Assurance	Major individual issues identified or collectively a number of issues raised which could significantly impact the overall objectives of the activity that was subject to the Audit.

Objectives and Scope

The objectives of this review were as follows:

Compliance with Policies, Laws and Regulations

- Any policies and procedures relating to Deprivation of Liberty Safeguards (DoLS) are current, adequate and accessible by all staff. Testing will include a review of the policies and procedures in place to ensure staff are made aware of their responsibilities.
- All requests for DoLS Assessments are processed in accordance with the required timescales. Testing will review a sample of referrals received in the last six months to ensure that they have been completed within the expected timescales.
- Authorisations are made based on the criteria set out by the safeguards and are supported by the evidence on which the decision is based. Testing will review a sample of authorised cases to ensure authorisation decisions are adequately documented.
- Individual cases are monitored so that the authorised timeframe is not exceeded without further authorisation. Testing will review the monitoring arrangements in place to ensure they are effective.
- The procurement of personnel to conduct DoLS assessments (where applicable) is compliant with the Council's Contract Standing Orders.

Safeguarding of Assets

- Sensitive information is accessed, shared, held and deleted securely. Testing will ascertain the processes in place for the secure processing and retention of sensitive information.

Effectiveness and Efficiency of Operations

- The budget for the DoLS is regularly monitored and any variation is escalated accordingly. Budgetary data for the last financial year (2020-2021), will be analysed.

Exceptions

IWC-2122-040-001 | Availability of Policies and Procedures

Low

Achievement of the Council's strategic objectives

Exception

Policies and procedures available on the website are out of date.

The following key documents were available on the intranet:

- DOLS policy - dated May 2015.
- Flowchart - dated April 2018
- EIA - dated May 2015

A new DoLS policy, equality impact assessment and process flowchart are currently being developed and are nearing completion. They have been signed off by legal services and are having external links added/verified (as at October 2021), at which point they will be approved by ASC leadership. Upon approval, they will be added to the intranet and be available on the services Microsoft Teams site.

Risks and Consequences

Without appropriate supporting policies and procedures, incorrect practices may be adopted which are not compliant with the principles of DoLS, increasing the risk of financial penalties imposed on the Council.

Agreed Action

Finalise the DOLS policy and associated documents, uploading this to the Intranet to ensure accessibility to information for relevant personnel.

Person Responsible / Action by Date

Group Manager, DOLS / May 2022

IWC-2122-040-002 | Compliance with timescales for Processing DoLS applications

High

Achievement of the Council's strategic objectives

Exception

Compliance with timeliness of processing is currently operating at around 5%, with only 4/83 authorisations taking place within legislative timescales. The service has been unable to complete assessments within deadlines resulting in an assessment backlog dating back to 2019, totalling 503 at 2020-21-year end; of these, 314 are marked as priority 1 (Covered further under data monitoring).

During 2020-21, the service received a total of 795 applications; 61.6% of these were marked as urgent, with 38.4% being standard (Source: NHS Digital). The service operates a risk-based prioritisation of applications, using ADASS approved templates to triage applications. This risk-based approach is predicated on the expectation that low priority cases are unlikely to attract challenge and any successful challenge would result in nominal damages. To date, no challenges have been received for delayed assessments or decisions. This approach enables the team to prioritise the entire caseload and fulfil cases based on the needs of individuals, but this impacts on the delivery of lower-priority new referrals and renewals.

Review of the DoLS Code of Practice established the following statutory timescales for the administration of DoLS referrals:

- Urgent authorisations should only be in place for seven calendar days, with a standard assessment and authorisation completed within this time. A further extension of seven days can be applied.
- Standard authorisations should be processed within 21 calendar days.

Data for referrals between 1st April 2021 to 11th October 2021 was analysed to ensure that the service is meeting its obligations for timely authorisation. 448 referrals had been received during this period, with 83 authorisation dates recorded against this population (19% of the population had been authorised).

20/83 were urgent authorisations. On average, it took 21 days to allocate a BIA to these assessments. Once allocated, it took an average of 34 days to complete through to authorisation.

63/83 were standard authorisations. On average, it took 29 days to allocate a BIA. Once allocated, it took an average of 37 days to complete through to authorisation.

Using the above figures, compliance with timeliness of processing is currently operating at around 5%, with only 4/83 authorisations taking place within legislative timescales.

Risks and Consequences

Failure to comply with legislation resulting in potential penalties.

Agreed Action

Person Responsible / Action by Date

The service will generate and agree a plan to reduce the length of time to process and authorise applications, to improve overall compliance with statutory deadlines, including:

- A plan to grow the team, introducing KPIs for the number of weekly completed assessments
- The Group Manager will liaise with the Business Information Team, regarding the future provision of team statistics, which also supports wider team resilience for the pending retirement of key personnel who currently generate this data, this should include the development of monitoring statistics to demonstrate the current financial year position of
 - referrals in / authorisations out
 - adherence to statutory time frames.

Group Manager, DOLS / August 2022

Compliance with Policies, Laws and Regulations

Exception

A waiting list of 503 applications was identified. Evidence of appropriate escalation of this issue to cabinet level was weak. Whilst interventions have taken place to reduce the waiting list, there is no documented strategy or action plan specific to this purpose.

Data is collated and reported monthly to ASC Leadership. Data is also supplied directly to NHS Digital allowing annual data comparison with other authorities. The monthly data monitoring report was found to be clear and well presented, however, it omits to specify compliance with timescales by not clearly demonstrating in year authorisations vs referrals, instead presenting cumulative data covering all years with outstanding referrals.

Most significantly, the data monitoring information shows a waiting list of of 503 applications, dating back to financial year 2019-20.

At September 2021:

- 80 outstanding for 2019-20
- 194 outstanding for 2020-21
- 232 overdue for the current year to date

NHS Digital estimated the backlog, reported as 500 in March 2020, would take eight months to clear (based on 2020-21 authorisation numbers), exceeding the national average of 5.9 months.

Nationally, challenges have been made and upheld by the Ombudsman relating to delayed decision making, resulting in financial penalties for injustices caused. Limited data was supplied to show that this issue has been escalated to the appropriate cabinet member outlining the impact/likelihood of this risk materialising and no documented action plan or strategy currently exists to support the clearing of the backlog. ADASS approved risk based triage takes place to manage and prioritise cases as effectively as possible.

Risks and Consequences

Failure to comply with legislation resulting in potential penalties.

Failure to keep the appropriate cabinet member fully informed, preventing high level scrutiny and strategising.

Agreed Action

An action plan will be developed to reduce the waiting list. The action plan will be regularly monitored and updated showing progress against agreed strategies.

Person Responsible / Action by Date

Group Manager, DOLS / August 2022

Service Manager, DOLS / May 2022

Due to the high risk of challenge, which may result in financial penalty, the appropriate cabinet member should be informed, allowing them the opportunity to oversee and support strategies to reduce this risk exposure.

IWC-2122-040-004 Commissioning of Assessments

Medium

Compliance with Policies, Laws and Regulations

Exception

Compliant procurement practices are not currently in place, due to the lack of a documented pay framework for assessments and a lack of transparency in the allocation of assessments.

The DoLS team procures the services of Section 12 Assessors (Doctors), Independent Best Interest Assessors (BIA) and Independent Mental Capacity Advocates (IMCA) as required, a list of these professionals is held by the team to 'spot purchase' as needed. The DoLS Group Manager explained that selection is based on various criteria including client location, contractor availability and case complexity however, no documented pay framework or selection criteria is available.

Analysis of payments to four vendors found payments for assessments varied by vendor, between £180 and £250 per assessment with some also being paid travel expenses.

Vendors invoice the team for assessments completed, this was confirmed within SAP where purchase orders and good received notices were correctly present for each vendor payment inspected. Prior to the Internal Audit review, payments to one assessor were found to have exceeded a procurement threshold of £10,000. The DoLS Group Manager is currently working with the Procurement Team to regularise these types of payment and develop an appropriate pay framework.

In the absence of a suitable framework, Internal Audit examined the recruitment screening and training records held for the external assessors. Three out of six S12 doctors (50%) and, seven out of eleven of Best Interest Assessors (64%), records were inspected to ensure they were suitably qualified for the roles. Full compliance was found, with all being subject to the provision of current insurance, ongoing professional membership, two years post qualifying experience, annual refresher training and a DBS check.

Risks and Consequences

Due to the lack of openness, transparency, and consistency in the selection of assessors and the amounts paid, the Local Authority is at risk of accusations of bias and favouritism.

Agreed Action

Person Responsible / Action by Date

Continue to work with Procurement until an agreed framework is in place for the selection and payment of external assessors.

Group Manager, DOLS / May 2022

IWC-2111-040-005 | Data Storage

Medium

Safeguarding of Assets

Exception

Data Storage

Testing relating to external assessors' records found that full DBS certificates and superseded information is retained. The Group Manager has arranged for a meeting with HR to regularise the information stored, which is currently not compliant with GDPR principles.

The service holds a shared corporate drive with access restricted to relevant personnel. This is set up as part of the recruitment process and through liaison with IT as needed. In addition to shared spreadsheets, the service inputs data into Paris, access to which is set up at user level with the agreement of management and suitable IT training. Access to data is therefore suitably restricted to required personnel.

Risks and Consequences

Failure to comply with legislation resulting in potential penalties.

Agreed Action

Person Responsible / Action by Date

Further to advice from HR, ensure records are cleansed and contain only relevant, up to date information.

Group Manager, DOLS / May 2022

Exception Ratings

The following tables outline the exceptions from the recent audit and are reported in priority order. Internal Audit report regularly to the Audit Committee on findings and management actions. However, in accordance with agreed protocols, all critical exceptions are brought to the attention of the Committee.

Priority Level	Description
Critical Risk	<p>Control weakness that could have a significant impact upon not only the system function or process objectives but also the achievement of the organisation's objectives in relation to:</p> <ul style="list-style-type: none"> • The efficient and effective use of resources. • The safeguarding of assets. • The preparation of reliable financial and operational information. • Compliance with laws and regulations. <p>And corrective action needs to be taken immediately.</p>
High Risk	<p>Action needs to be taken to address significant control weaknesses but over a reasonable timeframe rather than immediately. These issues are not 'show stopping' but are still important to ensure that controls can be relied upon for the effective performance of the service or function. If not addressed, they can, over time, become critical. An example of an important exception would be the introduction of controls to detect and prevent fraud.</p>
Medium Risk	<p>These are control weaknesses that may expose the system function or process to a key risk but the likelihood of the risk occurring is low.</p>
Low Risk (improvement)	<p>Very low risk exceptions or recommendations that are classed as improvements that are intended to help the service fine tune its control framework or improve service effectiveness and efficiency. An example of an improvement recommendation would be making changes to a filing system to improve the quality of the management trail.</p>