

Internal Audit Report

Deprivation of Liberty Safeguards (DoLS) Review

Interim Audit Report

1. Introduction

- 1.1. This report represents the interim findings of an audit on the Deprivation of Liberty Safeguards (DoLS) function within Safeguarding Adults part of the Adults Health and Wellbeing Directorate within Doncaster Council.
- 1.2. This piece of work was undertaken after it was identified during an Internal Audit proactive data analytics exercise to look for fraud and error, that there were payments to staff being made through the P2P (creditors / accounts payable) system. This was highlighted as an unusual and exceptional arrangement warranting further review. Further work found that the P2P creditor payments were being made to staff for work in completing DoLS best interest assessments in their own time.
- 1.3. The Accounts Payable Team in Finance and Corporate Services had also noted this practice and raised it with Internal Audit. In particular, questions were raised by staff in Accounts Payable about the number and value of invoices being paid to one specific individual.
- 1.4. An audit review was instigated after taking into account the data analytics work and the matters raised by the Accounts Payable Team. It was later found that some payments to staff for carrying out DoLS best interest assessments were also being made through the Payroll System using a Special Payments Wizard, which is normally used to process one off and honoraria payments to staff. Again, this looked unusual.
- 1.5. This interim audit report represents a summary of the work undertaken and issues arising so far. It is being presented to the Audit Committee following a request by the Audit Committee, and because of the inclusion of the matter as a significant issue in the Council's Annual Governance Statement 2016/17.

2. Legislation and Background to the DoLS

- 2.1. The Mental Capacity Act (MCA), which applies in England and Wales only, allows restraint and restrictions to be used but only if they are in a person's best interests and then only where the individual temporarily or permanently lacks the mental capacity to make a decision on their own. The Deprivation of Liberty Safeguards are an amendment to the Mental Capacity Act 2005, essentially requiring an assessment of a person's capacity to be completed when considering their care needs and any potential deprivation of their liberty.

- 2.2. Having mental capacity means being able to understand and retain information and to make a decision based on that information. Where an individual loses mental capacity and becomes unable to consent to care or treatment, it may be necessary, in their best interests, for other people to make decisions for them including those about their care. The most common example of this is the need to be placed in a care home. A lack of mental capacity must be established before a decision can be made on someone's behalf.
- 2.3. A judgement by the UK Supreme Court on 19 March 2014 relating to a case at Cheshire West Council led, overnight, to the need for a huge increase in DoLS assessments to be carried out. The case provided clarification on what constitutes a deprivation of liberty. The court found that an individual is deprived of their liberty if they:
- Lack the capacity to consent to their care/ treatment arrangements
 - Are under continuous supervision and control
 - Are not free to leave.
- 2.4. The judgement confirmed that all three elements must be present to meet the definition of a deprivation of liberty. Anyone in Council care who is subject to this level of supervision is likely to be being deprived of their liberty and a DoLS assessment is necessary. Therefore, anyone meeting these criteria now requires an assessment whereas, previously, without this clarification far fewer assessments were being carried out.
- 2.5. A report from the Health and Social Care Information Centre (HSCIC) confirmed that, following the Supreme Court judgment, DoLS applications rose approximately ten-fold.
- 2.6. The DoLS procedure is stringent and is designed to protect the rights and freedoms of individuals if they need to be detained in a hospital or care home in England or Wales where it is not their choice to enter the home or hospital. The care home or hospital where they will be staying must apply for, and be granted, a DoLS standard authorisation from a local authority in order to deprive an individual of their freedom, of their right to choose whether to go into a home or not or whether to stay there when placed. Without this, any detention of an individual in such accommodation where they have not consented to it, even if the detention is for their own good / safety, could be unlawful.
- 2.7. DoLS assessments consist of 6 elements:

- 2.7.1. Age Assessment – This is to confirm the person is over 18 as the safeguards only apply to those over 18
 - 2.7.2. No Refusals Assessment – This is to establish whether an authorisation to deprive the individual of their liberty would conflict with any other instructions, such as an advance decision by the person to refuse particular care or treatment, or where it could conflict with the opinion of someone with Lasting Power of Attorney (or a court appointed Deputy).
 - 2.7.3. Mental Capacity Assessment – This is undertaken to check whether the individual has the mental capacity to decide for themselves whether they should have particular care or treatment. Authorisations cannot be given where the individual has the capacity to make such decisions themselves.
 - 2.7.4. Mental Health Assessment – Authorisation can only be given where there is a mental disorder within the meaning of the Mental Health Act 1983.
 - 2.7.5. Eligibility Assessment – Under the Mental Health Act 1983, individuals are not eligible under certain circumstances. This assessment ensures that this is not relevant to this case.
 - 2.7.6. Best Interest Assessment – this assessment assesses whether a deprivation of liberty is occurring or is likely to occur and assesses whether this is in the individual's best interest, is necessary to keep them from harm and is proportionate to the likelihood of serious harm occurring. This assessment needs to take account of the views of others where specified.
- 2.8. Assessments must be carried out by a minimum of 2 assessors because the mental health assessment (MHA) and best interest assessment (BIA) must be carried out by different people and should be completed within 21 calendar days of the application being received by the supervisory body (in this case the Council).
- 2.9. DoLS assessments are time specific and time limited (usually up to 12 months). Individuals need reassessments during any major change in their circumstances and on a regular basis to ensure that their placement (usually in residential care) remains lawful and remains in the individual's best interest.
- 2.10. The increase in applications reflects significant extra activity for health and care providers (who must submit requests for DoLS authorisations and Court of Protection applications) and for local authority teams who have responsibility for assessing

requests for authorisations and where appropriate, authorising any deprivation of liberty.

- 2.11. Within Doncaster Council, a decision was taken in 2014 to create specific best interest assessor posts within Adults, Health and Wellbeing Directorate and to allow employees to undertake best interest assessments in their own time as well as pay external and independent best interest assessors to undertake the role. The agreed fee payable was £250 plus travel expenses per assessment. This payment value is (we are informed) in line with that used by other councils and is towards the lower end of the spectrum of values on offer.

3. Executive Summary

- 3.1. When concluding a summary of the work undertaken so far, **it should be noted that there were no concerns found during the review regarding safeguarding issues as all the clients reviewed / identified were being cared for.** The weaknesses found were purely surrounding the management and control of the DoLS function within the Council.
- 3.2. The process by which the DoLS assessments were being undertaken was disorderly as a consequence of being heavily manual and poorly managed. Systems in place were heavily reliant on manual intervention and manual monitoring with no real performance monitoring being undertaken within the process. There were also delays at most points during the process, resulting in backlogs of assessments being required and no clear monitoring of the number of assessments actually outstanding, or how long they had been outstanding.
- 3.3. Processes within the DoLS team for monitoring best interest assessments commissioned were poor, with overreliance on spreadsheets that were not fit for purpose and caused additional manual work (because only 1 person could update the spreadsheet at once). There was no management monitoring of the level of cases being assigned to individual assessors or of the overall level of outstanding work.
- 3.4. Data quality within the process was poor, with missing and inaccurate information in the spreadsheets in use and with data not routinely updated on the spreadsheets (this was mainly caused by the fact that only 1 person could access the spreadsheet at any one time resulting in multiple copies of the spreadsheet and no true and accurate overall record). This caused difficulties in completing the audit work; i.e. it was complicated to trace back which payments were made for which work and when. It also caused issues

in determining which assessments were complete and which were still outstanding (and at which point in the process they were).

3.5. The process set up to pay for assessments to be done failed to comply with the Council's Financial Procedure Rules and in places was directly contra to it (i.e. assessments being paid for in advance and prior to any form quality checking, the latter because of a backlog that persists on the sign off of such forms). There was no routine checking of payments made or in reconciling payments made to the assessments done. These lack of basic controls meant that no one picked up on the fact that some assessments were being paid but not being completed.

3.6. Arrangements to use employees to undertake best interest assessments were not properly considered or properly set up. The Officer Decision Record (ODR) in place to cover the arrangement made no mention of the use of employees to undertake additional best interest assessments or the consequences of doing so. Specifically;

3.6.1. Employees were allowed to set themselves up as sole traders and be paid through the P2P (creditors) system rather than through the normal payroll processes.

3.6.2. A taxation assessment undertaken by the DoLS Team wrongly concluded that the (internal) assessors had self-employed status, even though they were Council employees. This was because the tax assessment was not properly understood. However, we were able to confirm there were no actual tax errors because, even though the employees had been classified incorrectly, the correct amount of taxes had been paid to HMRC. It should be pointed out that the responsibility for undertaking this assessment lay with the DoLS Team and not the Accounts Payable Team.

3.6.3. There were no arrangements in place to monitor the working time directive (and associated breaches) for individuals undertaking best interest assessments, with some assessors doing assessments in their own time on top of a full time working week.

3.6.4. Work was routinely given out to employees (and external assessors alike) with no consideration of the number of assessments they already had outstanding or any consideration of whether the workload allocated was sustainable. Work was distributed based on the amount of work requested by individuals rather than considering what was "do-able" within the deadline period.

- 3.6.5. Overpayments arose because payments were made in advance and the respective for assessments were not then subsequently completed.
- 3.7. There were continual backlogs of assessments at each point in the process (although this position is the same within many other councils) however, there was little or no management information with which to properly manage the process. Clear figures for the size of back logs have been difficult to obtain throughout the review with significant amounts of manual effort required to provide updates when required. As a result, whilst backlogs were known about, their size and duration etc were never routinely known or managed
- 3.8. The DoLS Team have had several changes in management since 2014. Once the DoLS Acting Manager left the Council in June 2016 there was no-one directly supervising or overseeing the DoLS process. The process for allocating cases (previously done at Team Manager level) were then given to a junior officer (Scale 7) to complete / manage. This individual remains the only person within the team with a detailed understanding of the process or current changes within it and going forward, this is a significant business continuity risk. A manager is now monitoring this Team.
- 3.9. Senior management responsible for the service when these issues first arose have since left the organisation
- 3.10. Detailed Audit Findings are included in **Appendix 1**.

4. The Current Position

4.1. Actions to address the issues with the DoLS process remain in progress at the date of this report. Further work is still required to fully address the situation. As at the 6th of July, 2017 the position for the team regarding outstanding assessments was as follows:

Total number of required assessments not currently allocated to assessors	629
Total number of allocated assessments still outstanding (not yet returned by the assessors)	171
Total number of assessments awaiting sign off	837
Total number of assessments outstanding	<u>1637</u>

4.2. The assessment backlog above (629 cases) has increased over the last few months as a result of an embargo being placed on the allocation of cases whilst a more robust and manageable process was introduced and as a direct result of work to address data quality issues within the process.

4.3. The number of assessments awaiting sign off included above (837 cases) has also increased significantly over the last few months. This is a result of a lack of trained individuals to check and sign off the completed assessments. This issue is in the process of being resolved and a full time individual employed by the council is now assigned to these with the support of 10 other senior managers to take on additional cases. This should, going forwards, address this sign off backlog. The assessments awaiting sign-off include 511 cases where the assessments are now obsolete. Essentially these were cases where the individual is deceased, has been discharged from hospital or respite care, or has moved and requires a further assessment.

4.4. Plans are in place to use an external company to carry out a proportion of the outstanding initial assessments and their signoff checking, to reduce the current backlog until the DoLS service is back on track. These plans are in progress and an initial batch of 214 cases will be passed to this company when the contract is put in place.

5. Work undertaken to address the issues identified

5.1. The situation within the DoLS Team and process is improving and whilst the situation is not yet fully resolved, significant progress is being made. Work undertaken within the process so far to address the issues identified includes:

- The removal of the manual spreadsheet based monitoring systems;
- The creation of a new process within the Care First system to accommodate the requirements and ensure that information is being recorded within the Care First system and can be reported on;
- The migration of data to the Care First system;
- The development of reports with which to monitor the process (these are available and have been in use since May 2017 but are under validation processes to ensure that they are reporting accurately before they are put into full use);
- The development of new processes via the HR Portal to monitor the working arrangements of employees and agency workers (in order to comply with the working time directive). This process also ensures that employees are paid for using the correct procedures. External assessors will continue to be paid for through the Procure to Pay system;
- The cleansing of assessment data to address data quality issues and eliminate those assessments still within the process that are no longer required (paragraph 4.3 refers);
- The reconciliation of outstanding best interest assessments as recorded by the DoLS team to the outstanding work lists held by individual assessors to ensure that all outstanding assessments are captured in the data being input / uploaded to the Care First system and to chase up outstanding / overdue assessments;
- Work to contract with and outsource a proportion of the current work back log to an external supplier (this is currently ongoing and when contract issues are resolved this will commence); and
- An additional member of staff has been put in place to address the signoff backlog with additional training completed for 10 other members of staff (Heads of Service) to undertake some signoffs within their own roles.

6. Further work required

6.1. Despite the progress made, further work is still required to ensure that the process now functions correctly and that the DoLS backlog situation continues to improve. The work still required includes:

- Final testing and changes to the new DoLS process on Care First (including the new monitoring reports). This is expected to take 6-8 weeks and will involve validating the reports and information being produced until it can be relied upon without manual intervention;
- Reducing the backlog of assessments and signoffs outstanding to manageable levels. This is being achieved through a number of actions:
 - Some of the backlog is being outsourced to an external company as a one off exercise to clear some of the outstanding assessments.
 - Social workers are being trained to undertake best interest assessments and job descriptions have been amended to include these assessments as part of general social worker function rather than being treated as “additional work”. This is currently under consultation and it is hoped that this will be implemented by August 2017. This should in the medium to long term reduce reliance on external assessors but will never reduce the need for external assessments completely (due to the fact that the individual undertaking the assessment MUST be totally independent and have had no prior dealings with the person being assessed); and
- A review of the way that Care First and the Procure to Pay systems are used together to ensure that the new system provides adequate and robust financial controls over the new process to avoid any repeat of the data quality errors or overpayments identified under the old system.

APPENDIX 1

Detailed Audit Findings

1. The Supreme Court decision significantly increased the number of standard authorisation requests coming in from hospitals and care homes, causing a resourcing issue in 2014. There are now approximately 120-130 assessment requests received by the Council on a monthly basis.
2. A decision was taken in 2014 to temporarily increase the DoLS Team's capacity by creating additional assessment posts within the DoLS Team and also by allowing staff to undertake assessments in their own time. A rate of £250 plus expenses was established for each assessment undertaken. An ODR was completed at the time to cover additional assessment posts. This was done in March 2015. However, there was no mention in the ODR of staff undertaking assessments in their own time on top of their day jobs or the consequences of such an undertaking. This should have been part of an officer decision record. If this had been properly considered at the time, it is likely that arrangements, particularly in respect of remuneration methods, tax implications and the implications on the working time directive, would have been considered and addressed before the process started.
3. The process in place at the time of the audit review was as follows:
 - Standard authorisation requests were received via email to a shared team email box and then recorded on the DoLS spreadsheet;
 - Assessments were (and still are) allocated in order of priority. The priority is determined by the DoLS team and the assessment is allocated to registered assessors based on Best Interest Assessors (BIA) availability. This availability is provided by the assessors on a weekly basis;
 - Requisitions on the P2P system (R1s) were raised for the assessments allocated. This creates an order on the P2P system. This was usually a block order, for example a single order for say 10 different assessments rather than 1 order with 10 individual lines that could be receipted for and paid individually;
 - Orders are then generated from the requisitions raised;

- Emails are sent out to the Best Interest assessor – allocating the cases and include the order number raised and any relevant paperwork the assessor requires to complete the assessment;
- All DoLS assessments have a target date for completion. This is dependent on the priority of the individual case. Assessments are typically given a deadline of 2 weeks although it varies depending on the priority of the assessment;
- Completed assessments are received into the Safeguarding Adults DoLS email account (or individual staff emails in some cases);
- Admin staff acknowledge receipt of the assessment to the assessor via email;
- Admin staff “goods receive” the order for the assessment received on the P2P system, thereby clearing the way for any invoice received from the assessor to be paid. Invoices cannot be paid until someone has marked on the P2P system that the service / goods have been delivered;
- The BIA then sends invoice into accounts payable for payment;
- The invoice is matched to the goods received part of the relevant order and processed for payment by the Accounts Payable Team;
- The assessment is sent to a signatory for quality checking and signing off on behalf of the Council;
- Assessments that do not meet the quality checking process are sent back to the assessor for amendment or further work. This typically happens AFTER the BIA has been paid for the assessment;
- The care provider is then notified of assessment outcome.

4. We found deviation from the payments part of the process for some assessments, where the staff marked the orders as ‘received’ in advance, suggesting the assessments had been completed, when in fact in these cases they hadn’t. This is contrary to Financial Procedure Rules and led to overpayments being made, when subsequently some assessments that had been paid for were found to have not been completed.
5. Assessments were stored on the Council’s S Drive and not in the electronic document management system or on Care First. (This has since changed with the setup of a new process within the Care First system).
6. The above process is the standard process in use for external assessors (i.e those assessors NOT employed by the Council itself). Where the assessor is an employee, there were 2 ways in which assessors were paid. 1) – via the HR portal as an honorarium

(a process agreed with Human Resources) or 2) via the P2P system as in the above walkthrough. Payments made by both methods were poorly managed and monitored.

7. Payments made by the HR portal were made via a payment wizard. This was completed by the manager of the employee undertaking the assessment (not usually anyone from the DoLS team) on the basis of an email or other communication from DoLS to the manager. Once completed, the wizard required authorisation from HR and Senior Management (usually Pat Higgs) to sign off the wizard for payment. Wizards were then actioned by Rotherham Payroll Service and processed for payment. This form of payment has no associated hours or associated monitoring. Using this method it was unclear to managers actioning the wizards what hours were being worked or whether there were any issues for them to manage in terms of the working time directive with the action being effectively hidden (with the exception of the total amount being paid). This method was originally set up as a temporary solution but remained in use until March 2017.
8. A new payment system was set up following discussions between Human Resources, Rotherham Payroll Service and Internal Audit to eradicate the issues stated above from using the payment wizard. All best interest assessors who are employees are now set up on a relief assessor post which is set up on the HR portal under the DoLS Manager, so any additional hours payments can be signed off by someone who will have some awareness of the work undertaken. This payment method will provide more information regarding the number of hours worked and what it was for and enables reports to be run for management purposes.
9. Payments made for internal staff on the P2P system were paid in the same way as those for the external assessors despite their employee status. A “self-employed” status had been assessed for the individuals based on a form in use within Accounts Payable. A re-assessment for these individuals was done using the HMRC online tool and those incorrectly assessed corrected and put through the HR Portal method instead.
10. There were several spreadsheets in use in addition to the DoLS spreadsheet and there were numerous versions of the DoLS main spreadsheet. The spreadsheet was not fit for purpose, despite being redesigned by the Digital Council Team. The spreadsheet allowed only 1 person to use it at any one point. As a result, copies of the spreadsheet sprang up so that individuals could continue their work whilst others used the main spreadsheet. Whilst there is no evidence to suggest that these copies created a data quality issue within the main spreadsheet, there is equally no evidence to suggest that it did not. There are data errors within the spreadsheet for example assessments not marked as complete

when they were, assessments cancelled but not marked as no longer being required and assessments allocated on more than 1 date (multiple assessments) and assessments assigned to BIAs who were later changed where the spreadsheet was never updated to reflect it.

11. The nature of spreadsheets is such that there is no audit trail and it is impossible to tell whether this was the result of an omission or spreadsheet damage or even data loss. Given the fact that multiple people need to use it on a daily / hourly basis, the setup of such a system was inappropriate from the outset.
12. Quality checking and signoff for assessments completed were done after payments were made (by any of the methods in use). There is also no clear record of any assessments sent back for re-work due to quality issues or records to show whether any of these were actually returned.
13. The DoLS Team have had a backlog of DoLS requests since 2014 following the Cheshire West Supreme Court judgement, this however, is not an unusual position for councils across the country. However, when first requested, it was clear that the DoLS team could not easily identify how many assessments were outstanding at any one point, reportedly because the spreadsheet was not kept up to date. As a result manual work was required each time a position update was requested. No routine management information was produced by the system for action by managers.
14. The system in use within DoLS was heavily manual and in places disorderly. Data quality within the process was poor with the situation exacerbated by the use of inappropriate recording systems such as spreadsheet. Checking done on the spreadsheet to allocation emails has shown many discrepancies in the data with assessments marked as outstanding that have been received, incorrect and missing dates for events on the spreadsheet and in some cases (15+ cases) where the spreadsheet shows that the case was allocated to a different assessor than who completed it. Other data quality issues noted were errors in clients' names, care providers were incorrect, dates allocated were missing or in some cases inaccurate, dates the assessments were received were missing or inaccurate and the outcome of assessment was not always recorded.
15. The spreadsheets in use contained no way of checking and monitoring how many assessments had been sent back to assessors because of quality related issues and how many of these were still to be received back. Despite further work undertaken on the data, the number of assessments returned for rework remains a mystery.

16. There was no routine monitoring of assessments overdue or outstanding and no regular attempts made to chase these up. The timing of the completion of some assessments assigned significantly exceeded the 21 day target time, with delays of up to 159 days being recorded for some assessments.
17. Internal Audit has undertaken verification work to determine how many assessments are actually outstanding. This has shown other issues in addition to those above. Assessors were contacted by email to ask them how many assessments (and which) they believed that they had that were still outstanding. This was then compared to the listings held by DoLS and the numerous discrepancies investigated. In total it was determined that (at that time) there were over 200 cases outstanding, with over 40 of these having been paid for in advance. Some of the outstanding cases were so delayed the situation had changed before the assessments were undertaken making them no longer required. (Examples included assessments paid for where the person had moved, died or been released in the intervening period).
18. The overpayments found were a result of assessments that were paid for but were never received, assessments paid for but the work was not undertaken before the situation changed and was therefore essentially cancelled, work that was paid for but was done by alternative assessors, and rejected work that was received but was not satisfactory.