



Doncaster Council

Report

5 April, 2018

To the Chair and Members of the
AUDIT COMMITTEE

INTERNAL AUDIT REPORT - DEPRIVATION OF LIBERTY SAFEGUARDS (DoLS) – PROCESS REVIEW

EXECUTIVE SUMMARY

1. This report presents the results of Internal Audit's Deprivation of Liberty Safeguards (DoLS) Process Review. It has been completed to provide the Audit Committee with a full update following an interim report highlighting significant weaknesses in the Council's processes for managing and monitoring the carrying out of Deprivation of Liberty Safeguards (DoLS) assessments by the Council. This interim report was reported to the 27th July 2017 Audit Committee.
2. The audit review looked at all un-actioned issues at the end of the last report and changes made to the process (and its inclusion on CareFirst). The review found numerous issues. There has been a lack of management direction and supervision over a poorly designed and inadequately performing system with significant data quality issues. Whilst these might seem to be relatively low risk issues when considered in isolation, cumulatively, the effect is one of an underperforming process with little control and little information available to be able to identify the root cause of the issues that expose the Council to major risks.
3. Much of the delays in the process (in terms of the timely completion of assessments in line with the required standards of 21 days) are attributed to demand increase. However, there are other contributing factors in that systems are not appropriately set up, are being bypassed, contain little exception reporting, management information or controls. Staff related issues also remain a key factor in the performance of this service.
4. As a result the detailed audit report gave a "no assurance" opinion of the operation of the processes overall. This is the lowest level of assurance that can be given.
5. There has been a positive response from Management following the issue of the draft report, issued on the 22nd February 2018. In total 49 recommendations were raised, 18 being major, 26 significant and 5 moderate. 42 of which are due by the 31st October 2018 with 7 due after this date. The Director of People and the Assistant Director of Adult Care and Safeguarding are both fully supportive of the actions resulting from the audit with every recommendation having been accepted and appropriate timescales provided for their implementation. The directorate are currently actively working to address the issues raised during the audit.
6. 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 and the associated system through which the DoLS function operates.

7. Issues were identified within the interim report regarding:
 - the inappropriate payment of employees undertaking best interest assessments through the Accounts Payable (creditors) system rather than via payroll;
 - little or no consideration of the working time directive when allocating best interest assessments to employees to do in their own time on top of their existing day job;
 - the allocation of a volume of assessments that was significantly in excess of what could reasonably be achieved within the set deadlines;
 - payments made in advance of the work (assessments) being completed, in contravention of the Council's Financial Procedure Rules, this also leading to overpayments being made for assessments that were never completed.
8. Since the interim report the above items have all been resolved, however it should be noted that the above is not a complete list of all issues found but rather all issues that have been fully addressed.
9. The initial review identified other concerns which have now been concluded upon. These issues have been summarised later in this report;
 - Backlogs – Para 16
 - System / Process and management information – Para 17
 - Performance – Para 18
 - Data Quality – Para 19
 - Approved Assessor lists and payments to assessors – Para 20
10. This review also identified many further issues, the most significant of which are summarised under the titles of
 - Data Protection – Para 21
 - Notification of Outcomes – Para 22and these issues have also been summarised later in this report

Background to DoLS

11. The Council is the supervisory body for the DoLS process who has statutory responsibility for considering a deprivation of liberty request received from a managing authority e.g. a care home, commissioning the statutory assessments and, where all the assessments agree, authorising deprivation of liberty.
12. The DoLS Team is a relatively small service within the Adults, Health and Wellbeing Directorate of approximately 10 full time equivalent staff, some of whom also support the Safeguarding function. The team deals with the assessment of people who lack mental capacity and who need to be placed and detained in care homes, respite care or hospitals for their treatment or care in order to protect them from harm. Essentially, if someone loses mental capacity and becomes unable to consent to care or treatment, it may be in the individual's best interest for someone to make a decision for them about their care and where they should receive it (the most common example being the placement of someone in a care home).
13. Deprivation of Liberty Safeguard procedures are provided under the Mental Capacity Act 2005 and are there to ensure that no one is detained when it is not in their best interests and to prevent arbitrary detention where other possible alternatives have not been considered.

14. The DoLS Team receives referrals from care providers to undertake / arrange independent DoLS assessments for individuals. Each assessment is made of 6 elements that are completed by 2 different assessors:

- one is usually a medical professional who undertakes the mental health elements of the assessment, and
- the other is a 'best interest assessor', often a social care professional who has completed extra training in order to be able to undertake the assessments..

15. All mental health assessments are outsourced to appropriate medical professionals. Best interest assessments are completed by a combination of Council staff and external assessors. Best interest assessments (this is the part that can be done internally) take between 6-10 hours to complete. A Supreme Court Decision in 2014 led to an increase of tenfold in the number of assessments required to be carried out by local authorities. Doncaster Council is receiving requests at a rate of approximately 130 per month.

16. Backlogs

16.1. Significant backlogs were identified within the process throughout, with delays in the completion, review and eventual signoff of the assessments. Nationally however, such backlogs are not uncommon. The current level of outstanding work is as follows;

	No. as at 6 th July 2017	No. as at 22 nd January 2018	No. as at 06 th March 2018
Cases not yet allocated for assessment (includes new referrals received in the email inbox)	415	261	107
Cases in progress (assessment in progress or awaiting input to CareFirst after completing the assessment)	Not available	299*	225*
DoLS granted cases awaiting sign off	326	53	55
DoLS not granted cases awaiting sign off	511	608	908^
Other information			
Cases where a notification needs to be sent out	Not available	558	913
Forms returned to the Council that have not yet been input to CareFirst (<i>NB these are individual assessments and not cases – some cases will have both an MHA and BIA form to input</i>)	Not available	163	30
Notifications of moving / death not yet actioned	Not available	13	0

* this is the number of cases where both the BIA and MHA assessments are outstanding.

^ These are not all true 'not granted' cases where the person is deemed to have mental capacity, the majority of these are where the person has died or moved locations which still need signing off. This number has increased due to significant work carried out to clear cases where the person has died or moved location. Work is due to start shortly to sign these cases off.

16.2. The DoLS team has been working hard to reduce the number of requests and returned assessments held in the email inbox. Significant work has been carried out to remove any assessment requests that are no longer required, in particular, where the person has died or moved locations. This has had a considerable positive impact on the average number of days a case is waiting for BIA and MHA allocation. This has reduced from 156 days to 43 days for BIA allocation and from 158 days to 39 days for MHA allocation. This also has had an impact on the number of cases awaiting

allocation and the number of 'not granted' cases awaiting signoff. This is a significantly better position than has previously been reported.

17 System / Process and management information

- 17.1 Previously processes within the DoLS team for monitoring best interest assessments commissioned were poor, with over reliance on spreadsheets that were not fit for purpose and caused additional manual work (because only one person could update the spreadsheet at once). This process has been essentially replicated in CareFirst which has caused similar issues resulting in a system that is not currently fit for purpose and a process that is not being properly complied with. The systems in place are still heavily reliant on manual intervention and manual monitoring. Changes within the system will be necessary to remedy the issues identified but, unlike its predecessor, this process can be improved and made fit for purpose. The current system is being bypassed, data quality is poor, compliance with new processes is poor, which is leading to data quality issues and general confusion. The system is currently incapable of producing the statutory annual return, which for the current year will need to be manually calculated after data corrections have been completed.
- 17.2 There is no performance monitoring carried out as no performance indicators or targets have been set and no management tools are used to demonstrate the team's progress against targets. The CareFirst system has been programmed with associated "triggers". These are essentially reminders to complete various elements of the process. These are activated by the completion of a previous stage in the process. It is possible to monitor these "triggers" or actions to ensure that actions are completed in a timely manner; however, these actions are not being routinely signed off and are building up within the system. Therefore management are unable to determine what backlogs and delays are being caused by staff, poor computer setup, demand or competency issues. Without clear information to identify root causes of the delays and issues, resolution is not possible.
- 17.3 A reliance on an email storage system (folders for the storage of documents within an email box) is inappropriate and leaves the process exposed to data protection risks. The email box is being used as a work flow system to drive assessments and returns, however this is unsafe. Emails can be moved or deleted, or even modified without leaving an audit trail. Documentation that needs to be retained can easily go missing or be missed. In addition, email is not intended to be used to store data long term, nor is the email system a suitable retrieval system for data subject access requests as they are difficult to search and are not indexed under normal searchable criteria

18 Performance

- 18.1 The level of outstanding work at any point in time remains difficult to calculate and requires significant amounts of manual intervention. A large report is received on a daily basis and is filtered and counted. The number of emails and requests and assessments in email inboxes are manually counted and added to the figures, followed by manual data validation on the figures produced to correct data quality issues (assessments that are showing at the wrong stage in the process due to a failure to complete a "trigger" or action within the CareFirst system). This needs to be addressed urgently to improve the reliability of performance information and improve the efficiency of the process. In order to do this, running the process from an email box will need to cease with referrals and assessments being transferred / indexed and controlled directly from the EDM system.
- 18.2 DoLS standards require that an assessment is completed within 21 calendar days. This statistic is not currently monitored within the Council but assessment of the

current backlogs at the various stages strongly suggest that very few assessments are actually received, actioned and signed off within this timescale.

- 18.3 No exception reports have been developed to inform the team of any part of the process taking longer than expected or to monitor the actual length of time taken from receipt of a referral to the ultimate completion of the case and notification of the outcomes to those involved. Similarly, there are no exception reports identifying any cases stuck at particular stages, parts of the process not being completed or data quality errors that require correction. In addition, there are no monitoring reports covering performance or the number of assessments completed within the 21 day target

19 Data Quality

- 19.1 Data quality within the process is poor, with missing and inaccurate information in the CareFirst system and spreadsheets in use and with data not routinely updated on the financial spreadsheet in a timely manner (or in some cases accurately).
- 19.2 Validation exercises carried out to verify that data uploaded to the CareFirst system after migration were undertaken, however, staff checked their own work. This has resulted in few changes being made to the existing incorrect/inaccurate data, especially where staff had forgotten or were not fully aware of the process being followed. These issues have continued after migration. Validation checks undertaken by the DoLS Officer show and confirmed by audit testing, that parts of the process remain incomplete.
- 19.3 To compound the above, any qualitative reviews or validation exercises for performance information on the cases input onto CareFirst, are not routinely recorded or the issues addressed with the staff member concerned. These are usually corrected on the system but no learning is facilitated by providing feedback to the member of staff found to be non-compliant with the process. This lack of learning from the errors identified continues to compound the data quality issues already within the system and continues to divert resources away from addressing the assessments outstanding.

20 Approved Assessor lists and payments to assessors

- 20.1 Payments made to assessors now comply with financial procedure rules with all assessments being paid in arrears; however, there are still delays in paying assessors for work completed due to the inefficient working practices and delays in processing assessments received in the DoLS email inbox. The team do not reconcile payments made to assessments completed so are unaware if there are cases that should have been receipted on P2P (as the service having been delivered) and paid until an assessor chases for payment.
- 20.2 Approved lists in use for the Mental Health Assessors and Best Interest Assessors are incomplete and not up to date. No verification checks are made on information received from assessors. (The qualifications are accepted as read with no checking and references are not obtained). Information about accepted assessors is maintained on a spreadsheet. Examination of this found that for 16 assessors, the liability insurance had expired. These had not been chased up. It is likely that these insurances were renewed, however, without a suitable process to follow-up on expiries, the possibility of uninsured assessors cannot be ruled out.
- 20.3 Whilst reviewing the assessors list, it was also noted that no IR35 assessments have been carried out since October 2016, despite this being raised previously as a serious concern during the initial review. It is not clear why these assessments were stopped on new assessors. Examination of the supplier set up forms (forms completed and sent to the Procure to Pay team (P2P) to set up new assessors on the P2P system for payment) shows that the DoLS team are answering the question regarding IR35

checks by either leaving it blank (which is an issue for the P2P team themselves) or by stating that the checks have been undertaken when in fact they were not. All assessors set up from October 2016 need to be checked now to ensure that these assessors are not breaching IR35 Tax rules.

21 Notification of Outcomes

- 21.1 Relevant parties are not being notified of the outcome of DoLS assessments. As such, Managing Authorities (e.g. a car home) are not aware that a DoLS has been granted and may not be complying with any special conditions set for that person. Similarly, with any non-granted cases, those applying for a DoLS may not be aware of the fact that the DoLS was not granted and may be depriving a person of their liberty unlawfully.
- 21.2 Once an assessment has been signed off, a trigger / action within the system is raised to instruct the Administration team to generate the relevant letters on the system. However, these are not being routinely actioned unless someone phones in to chase up a request.

22 Data Protection

- 22.1 Significant concerns remain regarding data protection in terms of the data exchange between the DoLS team and individual external assessors. There are insecure transfers of sensitive personal data between the DoLS team, external assessors and Managing Authorities. Emails are received in for referrals and this cannot be avoided (in addition, this is a data protection issue for the referring body and not the Council). When allocated, emails are created and sent to assessors with an attachment containing the personal details of the person to be assessed. Attachments to emails are password protected, however this password has been in use for a considerable amount of time without being changed. These passwords are also easily removed.
- 22.2 When replying / sending back their assessments, assessors use unprotected Gmail and Hotmail accounts. The assessments sent back are highly sensitive and should be protected but are usually only protected by passwords (if at all). This is not considered to be an appropriate arrangement. In addition to this, external assessors have not been made aware of their responsibilities regarding data protection. As they process information on behalf of the Council, they are in effect data processors but the responsibility (and therefore costs) for any breach, remain with the Council. It is important therefore, that the process is designed with data protection in mind.
- 22.3 To address the above, it is strongly recommended that the CareFirst or any replacement system identified under DIPS (the Digitally Integrated Peoples Solution), allows these external assessors input through the firewall to the system to directly input assessments themselves. This would remove the data protection risks (if access was properly controlled) and would mean that manual tasks currently being undertaken by the Admin Team (copying and pasting the contents of an assessment manually into CareFirst) are avoided. It is acknowledged that this is a longer term recommendation. In the interim period, it is strongly recommended that use of the Council's ENCRYPT emails system is used to protect the data. Using this system, the assessors would create a user name and password to access information sent to them directly. By using the same system (logging in and clicking reply), returned assessments can be submitted WITHOUT using insecure email addresses, protecting the information in transit at all points and thereby minimising the risk of a data protection breach and the associated investigation and costs.

23. Internal Audit will be working closely with the directorate in overseeing and tracking the implementation of the agreed actions and will report as appropriate to future Audit Committees.

EXEMPT REPORT

24. This report is not exempt.

RECOMMENDATIONS

25. The Audit Committee is asked to note the audit review and the actions taken to date to address the issue by the Adults, Health and Wellbeing Directorate.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

26. Adult safeguarding is a fundamental part of the Council's remit and the Council needs to ensure that it complies with DoLS requirements to ensure that the liberty and rights of those needing care are not infringed. Ensuring that the service is fit for purpose and operating effectively is critical to supporting adult safeguarding and ensuring that in providing this service, the Council complies with the Care Act and safeguards its most vulnerable citizens.

BACKGROUND

27. This report provides the Audit Committee with information on the outcomes from and progress of the DoLS review and associated improvements and allows the Committee to discharge its responsibility for monitoring the Council's exposure to risks.

OPTIONS CONSIDERED AND REASON FOR RECOMMENDED OPTION

28. Not applicable.

IMPACT ON THE COUNCIL'S KEY OUTCOMES

Outcomes	Implications
Doncaster Working: Our vision is for more people to be able to pursue their ambitions through work that gives them and Doncaster a brighter and prosperous future; <ul style="list-style-type: none">• Better access to good fulfilling work• Doncaster businesses are supported to flourish• Inward Investment	None
Doncaster Living: Our vision is for Doncaster's people to live in a borough that is vibrant and full of opportunity, where people enjoy spending time; <ul style="list-style-type: none">• The town centres are the beating heart of	None

Outcomes	Implications
<p>Doncaster</p> <ul style="list-style-type: none"> • More people can live in a good quality, affordable home • Healthy and Vibrant Communities through Physical Activity and Sport • Everyone takes responsibility for keeping Doncaster Clean • Building on our cultural, artistic and sporting heritage 	
<p>Doncaster Learning: Our vision is for learning that prepares all children, young people and adults for a life that is fulfilling;</p> <ul style="list-style-type: none"> • Every child has life-changing learning experiences within and beyond school • Many more great teachers work in Doncaster Schools that are good or better • Learning in Doncaster prepares young people for the world of work 	<p>None</p>
<p>Doncaster Caring: Our vision is for a borough that cares together for its most vulnerable residents;</p> <ul style="list-style-type: none"> • Children have the best start in life • Vulnerable families and individuals have support from someone they trust • Older people can live well and independently in their own homes 	<p>The DoLS function is part of the Adults, Health and Wellbeing directorate who lead on adult safeguarding. The purpose of the DoLS function is to safeguard the liberty and rights of vulnerable individuals. Ensuring that the service is fit for purpose and operating effectively is key to ensuring that the Council complies with the Care Act and safeguards its most vulnerable citizens.</p>
<p>Connected Council:</p> <ul style="list-style-type: none"> • A modern, efficient and flexible workforce • Modern, accessible customer interactions • Operating within our resources and delivering value for money • A co-ordinated, whole person, whole life focus on the needs and aspirations of residents • Building community resilience and self-reliance by connecting community assets and strengths • Working with our partners and residents to provide effective leadership and governance 	<p>None</p>

RISKS AND ASSUMPTIONS

29. Failure to address governance and operational and management weaknesses within the DoLS function exposes the Council to the following risks:-
- Potential reputational damage to the Council as a result of a failure to undertake assessments within the required timescales;
 - Potential legal litigation as a result of any failure to / delay in the assessment of an individual's circumstances should it be determined that an individual had been wrongly detained in a care environment;
 - Potential financial loss as a result of a failure to control payments being made to mental health and best interest assessors;
 - Potential breach of the law.

LEGAL IMPLICATIONS (HJ/HMP, 13/3/18)

30. The local authority has a duty to determine whether or not to authorise the deprivation of liberty of a person who lacks capacity to agree to this who lives in a care home or hospital when the care home or hospital makes an application for this to be done. If a person who lacks capacity is being deprived of their liberty in a care home or a hospital and this has not been authorised then they are being illegally detained.
31. Failure to improve the processes carried out by the DoLS team potentially causes a detrimental impact upon the reputation and business affairs of the Council and could possibly result in litigation as a result of a failure to / delay in the assessment of an individual's circumstances should it be determined that an individual has been illegally detained in a care environment.
32. The Council is at risk under the Data Protection Act 1998 of fines from the Information Commissioner if personal data is unlawfully disclosed and individual officers may face criminal prosecution in the circumstances for deliberately failing to follow the Council's data protection processes.

FINANCIAL IMPLICATIONS (NC, 13/03/18)

33. The budget for the DoLS Service which is part of the Adults, Health and Wellbeing budget for 2017/18 is;
- | | |
|-------------------|---|
| DoLS General | £325k Including £207k Improved Better Care Funding (IBCF) |
| MCA/DoLS General | £219k Including £86k IBCF |
| MCA/DoLS Training | £ 26k |

The above budgets include additional funding from IBCF of £293k which was granted due to projected pressures in the service due to increased assessment numbers.

HUMAN RESOURCES IMPLICATIONS (DD, 13/03/18)

34. There may be retraining requirements resulting from the review and possible recruitment or secondment requirements which will be carried out in conjunction with normal HR processes.

TECHNOLOGY IMPLICATIONS (PW, 13/03/18)

35. It was identified that a failure to implement a suitable technological solution and a heavy reliance on alternative and manual systems to store data have been a significant contributor to

the problems of the team. Any further changes to the system should be made with consideration to the transfer to the Digitally Integrated People Solution (DIPS) process and whether changes are required prior to this transfer.

36. In addition, email is not intended to be used to store data long term, nor is the email system a suitable retrieval system for data subject access requests as they are difficult to search and are not indexed under normal searchable criteria.

HEALTH IMPLICATIONS (VJ, 13/03/2018)

37. Access to health and social care has the potential to impact on 20% of population health status. The deprivation of liberties safeguards (DoLS) service deals with people with mental capacity issues who are some of the Authority's most vulnerable people. Given that the audit report gave a "no assurance" opinion of the operation of the processes overall, which indicates major risks to the DoLS processes, there is potential for adverse health implications to this group of vulnerable population even though the report indicated no concerns regarding safeguarding (paragraph 7). The recommendations of the internal audit agreed with service providers will need to be monitored to ensure full implementation.

EQUALITY IMPLICATIONS (NFW 14/03/18)

38. The DoLS service serves vulnerable adults with mental capacity issues. The failure of the service would impact on some of the Authority's most vulnerable people.

CONSULTATION

39. Senior management within the Adult Health and Wellbeing directorate and staff within the DoLS team have been consulted with throughout the period of this review.

BACKGROUND PAPERS

The Mental Capacity Act 2005

Appendix A - DoLS Background Information

Deprivation of Liberty Safeguards (DoLS) Interim Audit Report - Audit Committee 27th July 2017

Internal Audit Deprivation of Liberty Safeguards (DoLS) Process Review report 8th March 2018

REPORT AUTHOR & CONTRIBUTORS

Nicola Frost-Wilson, Internal Audit Manager

Tel 01302 862931

Email: Nicola.Frost-Wilson@doncaster.gov.uk

Peter Jackson
Head of Internal Audit