National Review of the use of Deprivation of Liberty Safeguards (DoLS) in Wales 2014

Bridgend County Borough Council Abertawe Bro Morgannwg University Health Board

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NATIONAL REVIEW OF THE USE OF DEPRIVATION OF LIBERTY SAFEGUARDS (DOLS) IN WALES 2014

BRIDGEND COUNTY BOROUGH COUNCIL
ABERTAWE BRO MORGANNWG UNIVERSITY HEALTH BOARD
May 20th -22nd 2014

National Review

The Mental Capacity Act 2005 (MCA 2005) provides the statutory framework for acting and making decisions on behalf of people who lack the capacity to make decisions for them. The Deprivation of Liberty safeguards (DoLS) were subsequently introduced to provide a legal framework for situations where someone may be deprived of their liberty within the meaning of article 5 of the European Convention of Human Rights (ECHR).

The safeguards can be applied to individuals over the age of 18 who have a mental disorder and do not have the cognitive ability (mental capacity) to make decisions for themselves.

This report provides an overview of the use of deprivation of liberty safeguards in this Local Authority (LA) and Local Health Board (LHB). The fieldwork was carried out as part of Care and Social Services Inspectorate Wales (CSSIW) and Healthcare Inspectorate Wales (HIW) national thematic inspection of the Deprivation of Liberty Safeguards in Wales. The inspection took place shortly after the Supreme Court handed down a judgment in the case of P and Cheshire West and which has led to an increase in DoLS applications.

The national review involved a survey of all LHB's and local authorities and 3 days of fieldwork conducted in 7 local authorities and all the LHB's between April and May 2014. The findings from the individual inspections will inform a CSSIW/HIW national overview report.

The objectives were as follows: -

- To establish whether "the Safeguards" in the joint national monitoring report are effective in keeping people safe and that the relevant person/individuals are not being deprived of their liberty unnecessarily or without appropriate safeguards in place.
- To review how the DoLS Code of Practice is being implemented in practice and determine whether the guidance should be revised and updated.
- To investigate what contributes to inconsistencies in the use of DoLS across the Welsh LA's and LHB's.
- To identify if health and social care practitioners have the awareness, knowledge and skills to fulfil their respective responsibilities to effectively apply and manage DoLS when appropriate.
- To understand the experience of individuals and carers
- To identify and report good practice.

Introduction

The two organisations inspected, Bridgend County Borough Council (the Council) and Abertawe Bro Morgannwg University Health Board (the UHB), have a number of joint arrangements in place together with the two other Local Authories which is known as the Western Bay collaborative. These

arrangements include the Western Bay Safeguarding Adult Board (WBSAB) and some elements of the management of DoLS, however the service is not fully integrated. Each has their own operational arrangements in place for coordination, assessment and monitoring. There are shared arrangements through the dedicated MCA and DoLS Manager hosted by UHB whose role covers all the LAs and the UHB in the Western Bay. This role includes training, awareness raising, reporting and development of policy and procedures.

The LA has 'in-house' care home provision and so has both supervisory body and managing authority responsibilities under the DoLS legislation.
They do not share Best Interest Assessors (BIA) either with each other or other partners.

The level of DoLS activity in the Bridgend has been low when compared to other parts of Wales. The number of DoLS applications in 2012/13 (4) in the UHB per 100,000 population is the lowest in Wales (2013/14 figures not available) and the LA also has very low numbers, 10 (2013/14 figures).

The Western Bay grouping has developed an action plan in response to the Supreme Court Judgment which includes assessing the workforce implications and reviewing the care and support arrangements for people which will include people in long term accommodation provided by the NHS.

1. Quality of Applications & Assessment

The small number of DoLS applications indicates that it has not previously been a high priority for the Council despite the number of care homes within its boundary and the number of places it commissions. BIAs reported that in their experience care homes had a negative perception of DoLS and were confused about what circumstances should trigger an application. There were no applications from the care homes run by the Council itself during 2012/13.

Six individual cases were followed by inspectors and were appropriate and included clear and detailed reasons for the application. There were some errors in individual applications, for example in one case it was not clear from the recorded chronology that the assessments were completed within the required timescales. The majority of applications seen had been raised by the Managing Authority (MA) concerned, Care Managers and one by a CSSIW inspector as a third party during a regulatory inspection.

The inspectors reviewed a number of cases that were not authorised and there was a disposition towards not granting a DoLS, either urgent or standard, but rather to seek to reduce the deprivation towards a "mere restriction". This was achieved, for example, by moving to a different care setting or moving within the same care home as the relevant person required a safe environment. This would be considered good practice, however in

another example there was a discrepancy between the wording in the MAs application which described a “strong urge to leave and constant pacing” and the view of the Best Interest Assessor (BIA) who considered the level of confusion and agitation to not be significant. This practice will need to change following the Supreme Court Judgment.

GOOD PRACTICE

One care setting had developed a checklist tool to be used on the day of admission (or when a person’s circumstances change), for people who do may not have capacity. This tool helped them to identify potential deprivations of liberty and take suitable actions such as applying for an urgent and/or standard authorisation, contacting the adult safeguarding team or social worker.

In the UHB cases reviewed, there were a number of errors in the applications which indicated that staff were not familiar or confident in the use of the DoLS process. This was further demonstrated in the case files, as the Supervisory Body (SB) had had to return applications or seek further clarity over the rationale for the application. The SB was also receiving large numbers of queries from the UHB MA’s for guidance about DoLS and when an application should be submitted. The BIAs interviewed suggested that the attitude of staff on the wards within UHB is very negative towards DoLS and this was confirmed at the site visit. BIAs reported that the awareness of staff on the majority of hospital wards in relation to DoLs is poor. One ward manager had commented to an Independent Mental Capacity Advocate (IMCA) that they did not agree with the use of DoLS and therefore did not use them. There is a perception that the DoLS process is overly complex which was also a barrier to more applications being made. However there were some individual examples of detailed and thorough assessments. The UHB is experiencing an increase in applications as a result of the Supreme Court Judgement. It was reported to inspectors that the name of DoLs itself was viewed negatively by staff who felt by using DoLs they had done something incorrectly and that by using them it could be viewed as a negative reflection on their practice.

There were few referrals from the UHB to the IMCA service who reported that there are a number of people being supported by the NHS who in their view should be subject to DoLS. These individuals do not have tenancies but are subject to very restrictive care arrangements in their community settings and do not have choices in their day to day lives. This affects approximately 50 people and has been brought to the attention of the UHB in their supervisory capacity many times, by the IMCAs.

The BIAs reported that they considered that the Welsh documentation was often confusing and "not fit for purpose" but the English DoLS forms are clearer and more user friendly.

There were no cases reviewed that had been referred to the Court of Protection. Concerns were raised about the gap between moving from a hospital to a care home where a Lasting Power of Attorney was not in place to manage an individual's financial affairs when an individual lacked the capacity to agree to the arrangements.

2. Quality of Outcomes

As previously highlighted there was a focus in the Council on considering the least restrictive option for individuals and therefore reducing the need for a DoLS. However we also saw two case examples where a DoLS had been authorised and conditions put in place which were very effective in supporting a person's human rights. These included conditions linked to access to family, keeping safe and accessing the community. In one further case a condition was put in place that stated a case conference should be held between the professionals involved, the Relevant Person (RP) and their son who had mental health problems. This did take place and ensured that their relationship could be maintained with appropriate support and facilitation.

In the UHB where conditions were attached to DoLS authorisations, the BIAs expressed concern they were not always being adhered to within the timescales required. This could have an impact on the timeliness of hospital discharge as arrangements for their next placement had not been made. The group of staff interviewed felt that the Supreme Court Judgment will have a big impact on discharge planning and could mean people end up staying longer in hospital settings.

The IMCA's reported that, in their experience of the UHB, there were often no conditions placed on DOLs authorisations and therefore nothing really changed for the relevant person as there was nothing to work towards e.g. discharge planning. This has led to repeat applications being made for the same individual.

3. Engaging Service Users, Patients and Carers

The Council had leaflets available for the individuals, family and friends and Relevant Person's Representatives (RPRs) and the general public which are very detailed and comprehensive. We did not see these being promoted or used at the care homes we visited. There was also a clear information about DoLS available on the Council's internet site.

RPRs were appointed in the small number of cases where DoLS were authorised by the Council and they felt supported to fulfil this role, including being provided with the relevant information. Families had also been provided with information and reported that they felt listened to. Information leaflets for

patients, relatives and carers have been produced by the UHB and were available in the wards.

The IMCA service has a Welsh speaking advocate available and they also have access to Chinese and Polish community groups. One of the cases tracked was a Welsh speaker and there was evidence that this had been considered in the DoLS assessment and her subsequent care and support arrangements.

4. Quality of Workforce

The Council DoLS Coordinator sits within the Safeguarding Team and shares a business support with the rest of the team. The DoLs Coordinator also undertakes a coordinating role for adult safeguarding referrals but the Council has acknowledged that this is not sustainable in the longer term, particularly following the Supreme Court Judgment and the projected increase in demand.

There is a joint funded post across the 3 Councils and LHB in the Western Bay grouping who functions as the lead officer for DoLS. This post is part time and acts as a resource for the MA's providing advice, guidance and training. This was described by the latter as an invaluable resource to run queries past for advice and support, but there can be problems when the co-ordinator is not available. The administrative team within the Council supervisory body was reported to be a good source of help and guidance by individuals interviewed during the inspection.

There were only 3 active BIAs in the Council at the time of the inspection, however one more had been trained. The role of a becoming a BIA is seen as an "add on" to the day job which takes priority. Individuals are motivated by their own professional development and a personal commitment to the concept of human rights. There was previously a sub-regional meeting for BIA's but they no longer attend these. However a local meeting within the council takes place every 8 – 12 weeks. There was a perception that BIAs were sent into DoLS applications first to reduce the need for a Section 12 Doctor referral and this is explicit in the LA own DoLS procedures. The BIAs stated that at first each of them was doing things differently and so they would go out jointly to ensure consistency. There is a BIA register is in place across the Western Bay but is not fully up to date and this is not a shared resource.

The Council's supervisory body process states that you should appoint a BIA who is experienced in the client group but in reality an appointment is based on which ever BIA is available. The process also states that the managers of the care homes should be asked to explain the DoLS to the person as far as possible although this is difficult if the individual is confused.

The UHB has 11 BIAs which was reported to be insufficient to meet demand, especially since the Supreme Court Judgment. BIAs reported being over worked and can be asked to work at weekends to meet the demand for

assessments. There is a UHB BIA support group that meets quarterly to discuss recent cases and any issues. The BIAs reported finding this very helpful.

The Council has only made 14 referrals to the IMCA service since DoLS were introduced in 2009 and there have only been 5 referrals from the UHB since 2009, none of which were in Bridgend. However in recent weeks because of the Supreme Court Judgment, there has been a significant increase from the Council take up by the UHB is still very low. The IMCA interviewed felt that their role was not understood and was under used. They have offered to attend team meetings and provide training to try and address this but this has not been widely taken up. However, the IMCA stated despite this lack of take up the IMCA's were invited to talk to Senior Anaesthetists as part of one of their Continuing Professional Development sessions which was very well received.

Amongst the MAs (care homes), knowledge of DoLS was variable and in some settings, where you would expect a very good level of experience because of the needs of the people living there, the opposite was the case. However in some of the MAs visited , MCA and DoLS were a mandatory component of the induction training and they refreshed this on an annual basis. This had made a considerable difference to their understanding of how to identify a deprivation and make an appropriate application.

In the year between April 2013 and April 2014, 1,909 staff across the LHB and 3 Councils' in the Western Bay partnership received training on the MCA and 1,753 on DoLS. These were half day sessions and were not mandatory. The staff interviewed felt that this training was difficult to put into practice as it was theory based and there were no case examples provided. They also suggested that the training should include the DoLS application process in view of its complexity. The MCA and DOLs training was also delivered as part of a full training day with half of the day being dedicated to safeguarding. It was reported that the MCA and DOLs training should not be combined with other training and it would be beneficial for the training to be held over a full day.

Training for the MAs is available from the Council but in practice it has been difficult to access places as they are often oversubscribed. The training itself is valued but MAs thought it could have a more practical focus in order to be more accessible for staff. In addition, the support provided by the DoLS Manager was considered very helpful for ongoing advice and information when situations arose.

5. Leadership and governance

The DoLS supervisory function in the LA is now located in the Safeguarding Team, the management arrangements for DoLS have recently changed. This is the responsibility of the group manager for Safeguarding and Quality.

Future capacity arrangements are still being considered, particularly in the light of the Supreme Court Judgment which has led to an increase in referrals. The arrangements for the separation of the Supervisory Body and Managing authority have not been set out by the Council in their own DoLS Supervisory Body policy or in the Western Bay guidance documents. This is of concern as the Welsh Government guidance stipulates that there should be a clear separation of roles.

There is shared multiagency guidance for DoLS across the constituent Western Bay organisations and they have a MCA/DoLS consortium which meets quarterly and a Supervisory Body support group. The guidance sets out in detail the governance arrangements for the UHB to achieve the necessary separation of Supervisory Body and Managing Authority responsibilities. This is achieved by the function of the Supervisory Body being undertaken by a different locality manager. The governance arrangements for the Council have not been included in this document which is a missed opportunity. The pooling of BIA capacity and training resources is being considered by the Western Bay but as yet there are no firm plans. An action plan is reported to be under development to escalate this because of the impact of the Supreme Court Judgment.

One MA reported that the Council's response to making an application for the first time was very negative and they were made to feel inadequate as they did not understand the process and were asked to resubmit the application. It was not made clear what was meant to happen regarding the deprivation in the meantime i.e. was an urgent authorisation was not facilitated or agreed.

The Western Bay Safeguarding Adults Board (WBSAB) is currently chaired by the Director of Social Services for Swansea and DoLS activity and related information is reported on to the Board. The MCA and DoLS leads sit on the Board along with other relevant stakeholder organisations. There are a number of sub groups including an audit sub group chaired by the Director of Social Services in Bridgend which is developing a work plan to include of the DoLS related issues.

The Council's contract monitoring arrangements with care homes included the monitoring of Protection of Vulnerable Adult referrals but was no reference to MCA or DoLS. The partnership arrangements for commissioning across the Western Bay are well established and they are working on a methodology for fees and a quality premium payment which will encourage higher quality service provision.

Recommendations

1. There are a number of people being supported by the NHS who should be subject to DoLS as they do not have tenancies but are subject to very restrictive care arrangements and don't have choices in their life. This should be addressed as a matter of urgency.

2. In the light of the Supreme Court Judgment the Council and Health Board should ensure that the DoLS service moves to a sustainable footing with clear management accountability, partnership and governance arrangements.

3. The governance arrangements for the separation of supervisory body and managing authority functions in the Council need to be set out as part of their DoLS policy and reported to the Executive.

4. The Council and the UHB should develop robust quality assurance and reporting mechanisms to ensure that assessments and authorisations comply with legislation, guidance and case law and the DoLS activity is monitored corporately.

5. The Council and the Health Board should each review the BIA capacity to ensure that they are able to meet the requirements of the legislation and the Supreme Court judgment including options for reciprocal arrangements and/or pooled resources

6. A workforce plan which addresses the training requirements of all staff groups at an appropriate level for their particular role and contribution to MCA and DoLS should be developed in partnership with all relevant organisations including managing authorities. They should audit the effectiveness of all such training.

7. The Council and the UHB should develop information and tools for their staff that promote a better understanding of the role of IMCA's and when they should be used.