

Health Policy and Performance Board – Scrutiny Group

Topic: Deprivation Liberty Safeguards

Meeting Date: Tuesday 23 July 2019

Time: 5.30-7.30pm (meeting finished at 6.25pm)

Venue: Council Chambers, Runcorn Town Hall

Attendees:

- Cllr Joan Lowe (Chair)
- Helen Moir (Lead Officer)
- Cllr Pauline Sinnott
- Cllr Margaret Ratcliffe
- Cllr Geoff Zygadllo
- Dean Tierney
- Suzanne Shepherd
- Nicola Hallmark – Policy support

Apologies:

- Cllr Julie Roberts
- Cllr Eddie Dourley
- Cllr Sandra Baker

Discussions	Actions
<p>Topic group introduction</p> <p>Joan introduced topic area to be examined and thanked colleagues for their involvement in the scrutiny group.</p> <p>Helen explained reasoning for choosing topic in relation to its place of the corporate risk register. She said that the scrutiny was timely due to imminent changes to process following legislative review. As a result the topic group should span over the period of change.</p> <p>Helen briefly explained the structure of the safeguarding team, placing it as provision within her Divisional Manager remit.</p>	
<p>Deprivation of Liberty Safeguards – Overview</p> <p>Dean introduced himself as Principal Manager of the Safeguarding team.</p> <p>Dean went through his PowerPoint slide presentation.</p> <p>Additional/supportive information given throughout:</p>	

Deprivation of Liberty Safeguards (DoLS) assessment are managed by the Supervisory Body (the Council) where the service user has 'normal residency'. (in the sense a DoLS may be managed by HBC where an out-of-borough placement is agreed but the person's normal residency is Halton).

HBC is currently the Supervisory Body for all DoLS which apply to care home or hospital placements.

When introduced in 2009 (as part of the Mental Capacity Act) the eligibility criteria (for what constitutes a deprivation) revolved around 'relative normality'.

Two types of application – standard or urgent – standard is the usual request.

No refusals assessment – Dean gave an example of a person who has previously (prior to loss of mental capacity) stated they do not want blood transfusions. This decision would stand where capacity is lost as it represents their advance wishes.

Up to 2013/14 Best Interest Assessors (BIAs) were primarily based in Mental Health.

Cheshire West and Chester case in 2014 defined the 'acid test' which opened up the criteria for application. At this time DoLS were additionally opened up to Supported Living.

Dean gave DoLS figures following case law representing a radical increase.

Dean explained an apparent dip in 2017/18 in relation to a backlog of applications.

BIAs gone from nine to 28 since the 2014 case – this has involved additional training and resource allocation.

Also increase in need for Section 12 Doctors – who are commissioning to undertake assessment to determine whether service user needs to be treated under Mental Health Act.

Dean explained that the Council have a need to monitor the backlog and that it creates a risk of litigation – hence being on Corporate Risk Register. He went on to say that other authorities have come under scrutiny following the Cheshire West and Chester case and while applications have substantially increase there has been no extra funding from Central Government.

Dean presented backlog figures in comparison to other areas. Request made for figures from similar size councils to Halton.

SS to supply

Review of backlog explained by Dean and use of screening tool supports prioritisation.

Question raised in relation to situations where English is not first language. Dean explained that translation services would be sought and cited a bigger issue for Halton in relation to those who use sign language. He clarified that some upskilling was taking place across teams to support this.

Halton Borough Council Care Homes – Dean explained that DoLS legislation means that the Managing Authority and Supervisory Body cannot be the same person. As a result the Council will need to outsource part of the assessment process to external bodies where a DoLS application comes from one of our homes. Dean stated the going rate for external BIAs as £300 per assessment.

Section 12 Doctors – Dean explained the local agreement to set the charges and the savings made as a result.

Due to backlog overtime is currently authorised.

Dean referred to Liberty Protection Safeguards through, as forthcoming replacement for DoLS. He stated that once practice changes those on backlog would come under new assessment criteria, which is proposed to be less onerous.

Court of Protection (CoP) utilised for more complex case and for Supported Living applications. Dean gave an example of a case referred to CoP where a service user was placed out-of-borough following a 'best interests' assessment. He subsequently wanted to return to Halton and a Relevant Person's Representative (RPR) supported an appeal. Outcome was that care management are to continually review the case pending an in-borough placement (suitable to his needs) becoming available.

Dean expanded on the types of situations we could be criticised for and why it's important to continually risk assess.

Slides showed current Safeguarding Unit team setup – Dean explained expansion to meet changes.

Dean gave an overview of move towards Liberty Protection Safeguards (LPS) in response to widening of criteria as a result of Cheshire West and Chester case. He stated that the government commissioned the Law Commission to undertake a review and how this has led to legislative change. LPS guidance due to be issued Autumn 2019 and a period of transition will then take place. LPS are aimed at further embedding the Mental Capacity Act as a consideration from the start of care and support and puts the responsibility back on care managers

to get assessments right up-front. They will reduce the bureaucracy of the current assessment process with just three assessments. Dean further explained that under LPS an assessment of mental disorder may be based on historical/retrospective assessment lessening the need to commission Section 12 Doctors.

Dean and Helen confirmed that a steering group would be formed from September to plan and implement LPS.

Under the new processes BIA role will change to that of an Approved Mental Capacity Professional (AMCP) who would only conduct further assessment where a person is objecting to their arrangements.

Continuing Health Care (CHC) – where service users are full funded through CHC the Clinical Commissioning Group are responsible for making LPS arrangements.

LPS processes have previously indicated that care homes would undertake their own assessments and oversight of deprivations, however HBC is to remain supervision of this within the borough.

DoLS and LPS will run concurrently for a period of time to alleviate transition. Explanation given that this could impact on performance data submissions.

Potential recommendation proposed by Members – that more funding is required from central government to support the changes.

Question raised in relation to increase of applications following 2014 case and whether applications are warranted or whether organisations are acting with caution. Dean responded that the increase is due to the widening of who meet deprivation thresholds as a result of the 'acid test'. He stated that the test has been criticised as potentially subjective and this has been central to the need for legislative review.

Question raised about the need to protect social care staff from those who pose a risk and how this is dealt with for those who are under 18 years of age. Dean clarified that the Mental Health Act applies to all ages and that while the DoLs arrangements under the Mental Capacity Act currently on apply to those over 18 the LPS will reduce this threshold to 16 years.

Question raised around protecting others with vulnerabilities where DoLs would not apply. Dean explained that any incident of concern would be dealt with through safeguarding referrals, also coming under his team.

Question raised about people leaving a care home and the potential risks posed. Dean clarified that those with mental capacity are free to leave and where the Safeguarding Unit are made aware of potential illegal deprivations a letter is sent to settings and followed up.

<p>Performance – DoLS</p> <p>Suzanne explained that performance data on DoLS is collated for management and Member reporting and also for a statutory annual data return.</p> <p>The annual return requires a lot of data to be captured and the increase in number of DoLS has had a substantial impact on achieving the return. Suzanne has worked closely with the Safeguarding Unit to assure capture of relevant requirements on the social care data management system (CareFirst6).</p> <p>Suzanne stressed that the changes to data requirements following the introduction of the LPS are unknown as yet and further work will need to take place to look at this.</p> <p>Question raised about impact of transition to LPS on quarterly monitoring reports. Suzanne agreed that a narrative would be added to explain the situation and figures for DoLS and LPS may need to run parallel for a period of time. JL requested some details of forthcoming changes in quarterly report so that Members can start to understand changes.</p> <p>Helen reiterated that LPS would hopefully retain the value based of the Mental Capacity Act but reduce the administrative burden for the Council in the longer-term.</p>	<p>SS</p>
<p>Proposed schedule of activity – topic group</p> <p>Member of the topic group reviewed the proposed schedule of activities and agreed the content for the September meeting.</p> <p>Agreement reached that the agenda would be set on a monthly basis to acknowledge pending changes.</p>	<p>NH/DT to arrange speakers</p>
<p>AOB</p> <p>No further actions were requested.</p>	
<p>Next meeting: Wednesday 11 September 2019 – 5.30 – 7.00 – Civic Suite, Runcorn Town Hall</p>	

Meeting closed 6.25pm