Deprivation of Liberty Safeguards (DoLS)

Final Internal Audit Report

November 2023

Hywel Dda University Health Board

GIG CYMRU NHS WALES
Partneriaeth Cydwasanaethau
Gwasanaethau Archwilio a Sicrwydd
Shared Services Partnership
Audit and Assurance Services

GIG CYMRU NHS WALES
Bwrdd Iechyd Prifysgol Hywel Dda University Health Board

Contents

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Committee:	Audit & Risk Assurance Committee

Audit and Assurance Services conform with all Public Sector Internal Audit Standards as validated through the external quality assessment undertaken by the Chartered Institute of Public Finance & Accountancy in April 2023.

Acknowledgement:
NHS Wales Audit and Assurance Services would like to acknowledge the time and co-operation given by management and staff during the course of this review.

Executive Summary

Purpose

The purpose of the audit is to review the actions being taken to enhance the current Deprivation of Liberty Safeguards (DoLS) service to reduce the service backlog within the Health Board.

Overview

Current arrangements allow for the capture, recording and monitoring of DoLS referrals into the Health Board.

Actions and measures have been identified to address the backlog of DoLS referrals, including a funding request to Welsh Government for additional resources and training.

Whilst no key priority findings were identified, the following matters requiring management attention:

- no evidence of projected impacts, milestones or delivery deadlines to allow for the Health Board to track progress;
- the DoLS backlog entry in the risk register requires updating to reflect the actions and measures being undertaken, and
- the Mental Capacity Act and Concent Group has not met regularly in line with their terms of reference.

We have concluded **Reasonable** assurance for the actions being taken to manage the backlog.

Report Opinion

		Trend
Reasonable 	Some matters require management attention in control design or compliance. **Low to moderate impact** on residual risk exposure until resolved.	N/A

Assurance summary[1]

Objectives		Assurance
1	Actions to reduce the backlog of DoLS cases have been identified and patients are assessed and authorised within the statutory timescales.	Reasonable
2	Progress of service actions and implementation is reported to the Health Board and/or appropriate statutory committee.	Reasonable

[1]The objectives and associated assurance ratings are not necessarily given equal weighting when formulating the overall audit opinion.

Matters Arising

		Objective	Control Design or Operation	Recommendation Priority
1	Referral Spreadsheet and Web-Based Form	1	Design	Low
2	Projected Impact, Milestones and Deadlines	1	Design	Medium
3	Risk Register Entry	1	Operation	Medium
4	Mental Capacity Act and Consent Group	2	Operation	Medium

1. Introduction

1.1 The Deprivation of Liberty Safeguards (DoLS) was introduced to protect the human rights of those individuals who lack the mental capacity to consent to being deprived of their liberty. In 2019, the UK Government passed legislation to amend the Mental Capacity Act 2005 and to replace DoLS with the Liberty Protection Safeguards (LPS) following the Supreme Court judgment in the case of Cheshire Wests.

1.2 In April 2023, the UK Government announced that the implementation of LPS would not happen within the lifetime of the current Parliament. This indefinite postponement of LPS means that the Health Board must refocus and enhance the effective implementation of the DoLS. The risks resulting from the suspension of LPS include:

- DoLS is already managed 'at risk' by the Health Board as it is not possible to meet demand for assessments;
- many patients are not able to be assessed and authorised within statutory timescales; and
- Human Rights not being upheld as well as the risk of financial penalties and reputational damage to the Health Board.

1.3 The audit has focused on the plans and actions taken by the Health Board to reduce the DoLS backlog and improve Mental Capacity Act compliance.

1.4 The associated potential risks are:

- Patients' clinical needs are not met due to services not meeting the national requirements.
- Compliance with statutory requirements is not achieved.

2. Detailed Audit Findings

Objective 1: Actions to reduce the backlog of DoLS cases have been identified and patients are assessed and authorised within the statutory timescales

Current Referral Arrangements

2.1 The Health Board has an extant *Deprivation of Liberty Safeguards Policy* in place that sets out the process of ensuring patients that require protection of the DoLS can be identified, referred and assessed in a timely manner in line with the level of risk to their human rights.

2.2 The Policy is currently under review and confirmation from management sought that this will be finalised by October 2023. A guidance document and standardised referral form has also been produced by the DoLS Team for the processing of referred cases. These documents are all available on the organisation's intranet site.

2.3 All DoLS referrals received into the Health Board are triaged and assigned a prioritisation level based on the complexity of identified issues, with 'red' priority referrals allocated for assessment as soon as possible and 'green' priority referrals regularly monitored for any change in complexity and reprioritised where necessary. All referrals should be triaged within one working day or two working days if further information has to be sought.

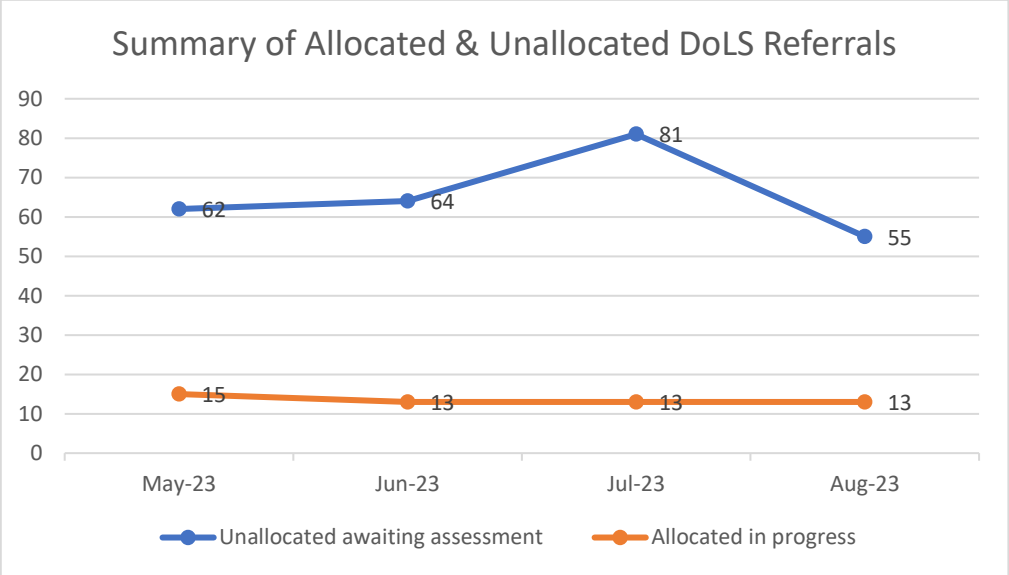
2.4 To capture and manage referrals, the DoLS Team have an established spreadsheet that is accessible to all staff members. We can confirm that the spreadsheet has been designed to capture both internal and external reporting requirements. A sample of referrals was tested and confirmed to have complied with the guidance.

2.5 The DoLS team are also working with the IT Department to develop a web-based referral form and enhance the current referral spreadsheet with the aim to reduce the processing time and enhance the quality of submitted content. This is currently in the developmental stages at present. **[Matter Arising 1]**

Understanding/Identifying Actions to Address the Backlog

2.6 A breakdown of the DoLS referrals assessments for the period May to August 2023 highlighted the gap between the number of assessments in progress versus the unallocated assessments awaiting review – see Figure 1.

Figure 1 – Monthly Allocated v Unallocated Referral Assessments



2.7 To address this gap, the DoLS Team have implemented the following measures. Funding was provided by the Welsh Government (WG) in 2022/23 for the transition to LPS. Whilst LPS has since been indefinitely postponed, funding has been submitted to WG for 2023/24 with the primary intention to improve the backlog of DoLS referral assessments.

2.8 Actions to improve the DoLS process was outlined in the funding application submitted to WG with resource identified to aid the processing of referral assessments and to help provide training to staff across the Health Board. The funding application contained a detailed breakdown of the needs for the Health Board for 2023/24 that had been approved by the Director of Operations.

2.9 The DoLS Team commenced roll out of staff training in August 2023. Training slots are available twice a month which staff can book onto via ESR with training centered around when and how to make a referral. The aim of this roll out is to improve the quality of referrals made and increase understanding of the process that will result in unnecessary referrals being made, thus reducing the overall number of referrals.

2.10 Whilst actions have been identified to increase resource and roll out a training programme, we were unable to evidence the projected impact of these measures in order for the Health Board to track progress and identify milestones and deadlines in the reduction of the DoLS backlog. **[Matter Arising 2]**

2.11 The backlog of DoLS referrals is currently managed at risk by the Health Board due to the existing service not being able to meet demand for assessments. The risk is recorded in the Health Board's risk register and identifies the root causes and potential impact to the organisation.

2.12 Whilst the backlog of DoLS referrals has been recorded on the risk register, further enhancements, including the steps and actions noted above, should be listed as part of the additional actions. The DoLS backlog entry on the risk register may

require a review if approval of funding by WG for additional resource is declined. **[Matter Arising 3]**

Conclusion:

2.13 The current DoLS referral arrangements capture, record and allow for monitoring of assessments by the DoLS Team. Actions to aid these arrangements to reduce the backlog of DoLS referrals was evident in the funding requests made to WG.

2.14 The projected impact of these actions to allow the Health Board to track progress of key milestones and deadlines was not evident nor were these measures reflected in the risk register entry. Accordingly, we have concluded **Reasonable** assurance for this objective.

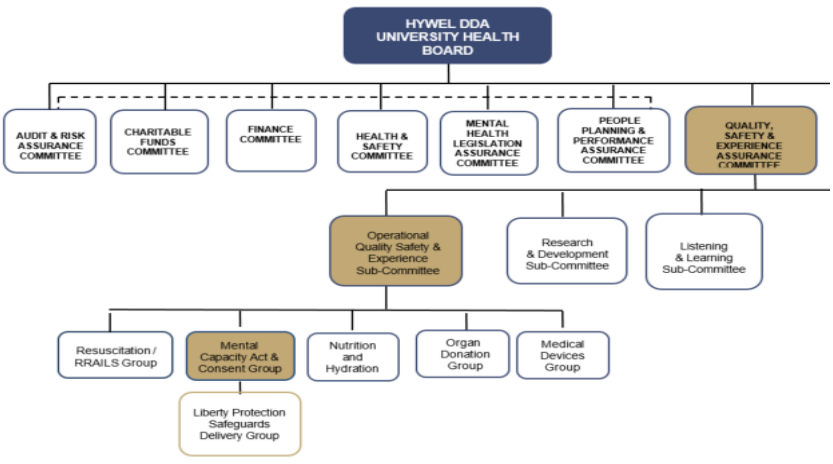
Objective 2: Progress of service actions and implementation is reported to the Health Board and/or appropriate statutory committee.

2.15 The monitoring of DoLS activity is regularly reported to the Long Term Care Management Team. The DoLS Coordinator would submit monthly updates detailing new referrals, activity, outstanding demand and outcomes together with a narrative of any exceptional circumstances affecting progress.

2.16 Reports detailing DoLS activity are also prepared on a quarterly basis for presentation to the Mental Capacity Act and Consent Group in line with the group's terms of reference (TOR). Review of the papers of the group for the period June 2022 to July 2023 highlighted that the group only met three times within the review period (June 2022, December 2022 and April 2023) and subsequently the reports submitted covered a period of six months. Management acknowledged that due to extenuating circumstances it was not possible to hold quorate meetings on a quarterly basis. **[Matter Arising 4]**

2.17 The reporting structure through to the Health Board has been establish and documented in the Mental Capacity Act and Consent Group TOR – see Figure 2 below. Testing confirmed DoLS activity is reported through to the Operational Quality, Safety & Experience Sub Committee (OQSESC) and the Quality, Safety & Experience Committee (QSEC) on an exception basis.

Figure 2 – Mental Capacity Act and Consent Group Terms of Reference



2.18 The Health Board are under obligation to provide data to the Care Inspectorate Wales (CIW) and Health Inspectorate Wales (HIW) for the *Deprivation of Liberty Safeguards Annual Monitoring Report for Health and Social Care* report. The latest data provided by the Health Board was used in the production of the 2021-22 report published in February 2023.

Conclusion:

2.19 A clear reporting structure from the DoLS Team through to the Health Board was evident in addition to reporting to external bodies. However, we did identify instances where the Mental Capacity Act and Consent Group had not been meeting in line with the frequency set out in the TOR. Accordingly, we have concluded **Reasonable** assurance for this objective.

Appendix A: Management Action Plan

Matter Arising 1: Referral Spreadsheet and Web-Based Form (Design)	**Impact**
The DoLS Team are currently working with the IT Department to enhance their referral spreadsheet and develop a web-based referral form with the aim of reducing the processing time and increase the quality of content.	Potential risk of: • Potential opportunities to streamline processes are not achieved.

Recommendation		**Priority**
1.1	Progress updates on the development of the referral spreadsheet and web-based referral form should be provided regularly to management.	**Low**

Agreed Management Action		**Target Date**	**Responsible Officer**
1.1	The Digital Project Support request submitted to the IT team was agreed in October 2023. The implementation of this project will commence once resources have been confirmed and allocated.	1st March 2024	Steve Hughes (DoLS Coordinator)

Matter Arising 2: Projected Impact, Milestones and Deadlines (Design)			**Impact**
Whilst actions have been identified to increase resource and the roll out of training, we were unable to evidence the projected impact of these measures in order for the Health Board to track progress and identify milestones and deadlines in the reduction of the DoLS backlog.			Potential risk of: • Patients' clinical needs are not met due to services not meeting the national requirements. • Compliance with statutory requirements is not achieved.
Recommendation			**Priority**
2.1	An action plan setting out the projected impact of additional resource and training programmes should be developed, including milestones and deadline for delivery. Regular progress updates should be provided to an appropriate group or committee.		**Medium**
Agreed Management Action		**Target Date**	**Responsible Officer**
2.1	Initially measurement of the impact of the additional resources and training programmes will focus on two key measurements: 1. The number of potentially inappropriate DoLS referrals received by the team, expressed as a percentage of all new referrals received. 2. The total number of DoLS assessments completed by the team. Success would be shown by a decrease in inappropriate referrals and an increase in assessments completed. We will set a 6 month target to reduce inappropriate referrals by 30% and to increase completed DoLS assessments by 10%. Data for both measurements will be collected and reported monthly to the LTCT and quarterly to the Consent and Mental Capacity Group.	1st March 2024	Steve Hughes (DoLS Coordinator)

Matter Arising 3: Risk Register Entry (Operational)			**Impact**
Whilst the backlog of DoLS referrals has been recorded on the risk register, further enhancements including the steps and actions noted, should be listed as part of the additional actions. The DoLS backlog entry on the risk register may require a review if approval of funding by WG for additional resource is declined.			Potential risk of: • Patients' clinical needs are not met due to services not meeting the national requirements. • Compliance with statutory requirements is not achieved.
Recommendation			**Priority**
3.1	The DoLS backlog record listed on the risk register should be reviewed and updated to reflect the steps and actions that are being undertaken mitigate the identified risk.		**Medium**
Agreed Management Action		**Target Date**	**Responsible Officer**
3.1	Actions have been added to the risk register with new review dates set.	31st January 2024	Steve Hughes (DoLS Coordinator)

Matter Arising 4: Mental Capacity Act and Consent Group (Operational)			**Impact**
Review of the papers of the group for the period June 2022 to July 2023 highlighted that the group only met three times within the review period (June 2022, December 2022 and April 2023) and subsequently the reports submitted covered a period of six months. Management acknowledged that due to extenuating circumstances it was not possible to hold quorate meetings on a quarterly basis.			Potential risk of: • Patients' clinical needs are not met due to services not meeting the national requirements. • Compliance with statutory requirements is not achieved.
Recommendation			**Priority**
4.1	The Mental Capacity Act and Consent Group should ensure that they meet regularly in line with the frequency set out in the terms of reference.		**Medium**
Agreed Management Action		**Target Date**	**Responsible Officer**
4.1	The MCA & Consent Group recognises that it was difficult to schedule all four quarterly meetings last year, due to extenuating circumstances. Every effort will continue to be made to ensure that the meetings go ahead as per the Terms of Reference of the Group. The DoLS Activity report is a standing item on the agenda and will continue to be so. If, for reasons outside our control, it is not possible to hold a scheduled meeting, this will be rearranged as soon as possible. If it is not possible to rearrange the meeting, then agenda items will be carried over to the next meeting. Those requiring urgent action will be consulted upon 'virtually' and approved via Chairman's action.	25th September 2023 (& Ongoing)	Madeleine Peters (Head of Consent and Mental Capacity)

Appendix B: Assurance opinion and action plan risk rating

Audit Assurance Ratings

We define the following levels of assurance that governance, risk management and internal control within the area under review are suitable designed and applied effectively:

	**Substantial assurance**	Few matters require attention and are compliance or advisory in nature. **Low impact** on residual risk exposure.
	**Reasonable assurance**	Some matters require management attention in control design or compliance. **Low to moderate impact** on residual risk exposure until resolved.
	**Limited assurance**	More significant matters require management attention. **Moderate impact** on residual risk exposure until resolved.
	**Unsatisfactory assurance**	Action is required to address the whole control framework in this area. **High impact** on residual risk exposure until resolved.
	**Assurance not applicable**	Given to reviews and support provided to management which form part of the internal audit plan, to which the assurance definitions are not appropriate. These reviews are still relevant to the evidence base upon which the overall opinion is formed.

Prioritisation of Recommendations

We categorise our recommendations according to their level of priority as follows:

Priority level	Explanation	Management action
High	Poor system design OR widespread non-compliance. Significant risk to achievement of a system objective OR evidence present of material loss, error or misstatement.	Immediate*
Medium	Minor weakness in system design OR limited non-compliance. Some risk to achievement of a system objective.	Within one month*
Low	Potential to enhance system design to improve efficiency or effectiveness of controls. Generally issues of good practice for management consideration.	Within three months*

* Unless a more appropriate timescale is identified/agreed at the assignment.

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