



## Y PWYLLGOR ANSAWDD, DIOGELWCH A PHROFIAD QUALITY, SAFETY AND EXPERIENCE COMMITTEE

<b>DYDDIAD Y CYFARFOD: DATE OF MEETING:</b>	11 April 2023
<b>TEITL YR ADRODDIAD: TITLE OF REPORT:</b>	Update on the risks to Hywel Dda University Health Board (HDUHB) and its Deprivation of Liberty Safeguards processes due to the delays implementing the Liberty Protection Safeguards.
<b>CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR:</b>	Jill Paterson, Director of Primary Care, Community and Long Term Care
<b>SWYDDOG ADRODD: REPORTING OFFICER:</b>	Steven Hughes, Deprivation of Liberty Safeguards Coordinator

**Pwrpas yr Adroddiad (dewiswch fel yn addas)**

**Purpose of the Report (select as appropriate)**

Er Gwybodaeth/For Information

### ADRODDIAD SCAA SBAR REPORT

#### Sefyllfa / Situation

This report sets out the risks for the Health Board due to the delays in the implementation of the Liberty Protection Safeguards (LPS) and the mitigation factors in place.

#### Cefndir / Background

LPS are due to replace the Deprivation of Liberty Safeguards (DoLS). Although enacted in March 2019, no date has been confirmed for when the LPS will be implemented although it is not expected to be until at least April 2024 while a new Code of Practice is developed and the associated Regulations are in place. Until then, DoLS will continue to be the legal framework for deprivations of liberty in our hospitals for those lacking relevant capacity (unless detention is required under the Mental Health Act).

LPS is being introduced as it has long been established that DoLS is unfit for purpose. The volume of referrals for DoLS assessments, particularly since the so called “Cheshire West” judgement in 2014 that redefined the meaning of a deprivation of liberty leading to a ten-fold increase in referrals, far outstrips the resources available to assess them. This is a national issue and not specific to HDUHB. The intention of LPS is to reduce the administrative burden of the current DoLS process and its reliance on a small number of specialist assessors.

Additionally, in widening the range of health and social care professionals who will be involved in undertaking assessments for deprivations of liberty under LPS, it is hoped that knowledge and application of the wider Mental Capacity Act will be enhanced.

While awaiting implementation of LPS, the challenges caused by the current DoLS process will continue to be experienced:

- Most patients will not be assessed within the statutory timescales. HDUHB received over 700 new DoLS referrals in 2022/23 with approximately 21% of those being

assessed. Of the remainder, most were discharged or deceased before they could be assessed, the rest being withdrawn as the person no longer met one of more of the DoLS criteria.

- Potential for unlawful deprivations of liberty to occur with risk of complaints or claims against the Health Board.
- Ongoing shortage of DoLS Medical Assessors to undertake the Mental Health and Eligibility assessments for DoLS, leaving the Health Board reliant on equivalent assessments. The shortage of DoLS Medical Assessors can cause delays in completion of DoLS assessments and authorisations. The DoLS service therefore is currently heavily reliant on “equivalent assessments” for the mental health criteria. These are assessments undertaken for other purposes (e.g. memory assessment service formulations) that can be used in support of DoLS. In many cases however the required information is not readily available which cause delays in assessment. .

### Asesiad / Assessment

To minimise the risks outlined above, mitigating actions have been taken:

All DoLS referrals are triaged according to criteria set out in the DoLS Policy which aim to ensure that the cases where a person’s right to liberty is most at risk are prioritised for assessment.

All unassessed referrals are actively and regularly monitored by the DoLS team to ensure any changes in the persons circumstances are identified and the need for an assessment re-prioritised where needed.

A quarterly report on DoLS activity is presented to the Consent and Mental Capacity Group and which includes whether any complaints or claims have been made in relation to DoLS. To date, HDUHB have not received any complaints or claims in relation to unassessed patients or unlawful deprivations of liberty. This includes where cases have been presented to the Court of Protection and where gaps in lawful detention arising due to DoLS pressures have been acknowledged.

A recent tendering exercise for Medical Assessor provision has been undertaken. Although this has only attracted one response, with the potential provider currently being assessed for suitability, it is expected that a contract can be awarded shortly that will improve provision of these statutory assessments.

Historical actions to mitigate risks have included expansion of the DoLS team of best interest assessors from two to five full time posts since 2016. DoLS awareness training is provided as part of the Mental Capacity Act mandatory e-learning program and through face to face and video training sessions by the MCA team, DoLS team and Reducing Restrictive Practice team, all of whom work collaboratively to enhance awareness of deprivations of liberty and the actions required by health board staff.

The provision of Independent Mental Capacity Advocates (IMCA) under DoLS and the wider Mental Capacity Act (MCA) is managed through a Service Level Agreement (SLA) with a local provider. Additional funding from Welsh Government has been provided to HDdUHB to work with its provider to increase IMCA and other MCA related advocacy services ahead of the implementation of LPS. A new All Wales IMCA contract is due to go out to local tender this summer, the aim being to consolidate changes to the demands for this service into a new fit-for-purpose contract.

Overall, the DoLS service in HDUHB continues to manage an increasing number of referrals with a finite resource of assessors and authorisers. The focus is on ensuring those most in need of the protections offered by DoLS are identified and assessed as quickly as possible while ensuring the consistent high quality of assessments is maintained. The delays in the implementation of LPS do not introduce any new or increased risks to the Health Board but the ongoing issues associated with DoLS will remain present until LPS is implemented.

### Argymhelliad / Recommendation

The Committee is asked to take assurance from the mitigating actions taking place.

### **Amcanion: (rhaid cwblhau)**

### **Objectives: (must be completed)**

Committee ToR Reference: Cyfeirnod Cylch Gorchwyl y Pwyllgor:	2.1 Scrutinise, assess and seek assurance in relation to the patient impact, quality and health outcomes of the services provided by the Board.
Cyfeirnod Cofrestr Risg Datix a Sgôr Cyfredol: Datix Risk Register Reference and Score:	Not Applicable
Safon(au) Gofal ac Iechyd: Health and Care Standard(s):	2.7 Safeguarding Children and Safeguarding Adults at Risk
Amcanion Strategol y BIP: UHB Strategic Objectives:	All Strategic Objectives are applicable
Amcanion Cynllunio Planning Objectives	Not Applicable
Amcanion Llesiant BIP: UHB Well-being Objectives: <a href="#">Hyperlink to HDdUHB Well-being Objectives Annual Report 2018-2019</a>	10. Not Applicable

### **Gwybodaeth Ychwanegol:**

### **Further Information:**

Ar sail tystiolaeth: Evidence Base:	(1) <a href="#">P v Cheshire West &amp; Chester Council &amp; another;</a> (2) <a href="#">P &amp; Q v Surrey County Council   39 Essex Chambers</a> (2) <a href="#">The Right to Freedom and Safety: Reform of the Deprivation of Liberty Safeguards - Joint Committee on Human Rights - House of Commons (parliament.uk)</a>
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Rhestr Termiau: Glossary of Terms:	IMCA – Independent Mental Capacity Advocate – A fully trained and qualified advocate with knowledge of the MCA who works within a specific remit supporting those lacking capacity where there is no-one apart from paid professionals to consult.
Partïon / Pwyllgorau â ymgynhorwyd ymlaen llaw y Pwyllgor Ansawdd, Diogelwch a Phrofiod: Parties / Committees consulted prior to Quality, Safety and Experience Committee:	Consent and Mental Capacity Group

<b>Effaith: (rhaid cwblhau)</b> <b>Impact: (must be completed)</b>	
<b>Ariannol / Gwerth am Arian:</b> <b>Financial / Service:</b>	Yes
<b>Ansawdd / Gofal Claf:</b> <b>Quality / Patient Care:</b>	Yes
<b>Gweithlu:</b> <b>Workforce:</b>	Yes
<b>Risg:</b> <b>Risk:</b>	Yes
<b>Cyfreithiol:</b> <b>Legal:</b>	Yes
<b>Enw Da:</b> <b>Reputational:</b>	Yes
<b>Gyfrinachedd:</b> <b>Privacy:</b>	Not Applicable
<b>Cydraddoldeb:</b> <b>Equality:</b>	Not Applicable