

*****This is an open meeting*****

Members of the public are welcome to observe from the public gallery

Adult Social Services Scrutiny Performance Panel

Date: 21 September 2016 **Time:** 4.00pm

Venue: Committee room 3C, Guildhall, Swansea

Summary: This is an agenda pack for a meeting of the Adult Social Services Scrutiny Performance Panel taking place on the 21 September 2016. The main item is the deprivation of liberty safeguards briefing.

Members of the Panel:

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| Uta Clay (CONVENER) Paxton Hood-Williams Yvonne Jardine Geraint Owens Ann Cook Paulette Smith Peter Black | Chris Holley Jeff Jones Sue Jones Gloria Tanner Tony Beddow |
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AGENDA

| No. | Item | | | | | | | | | | | | | | |
|-----------------|---|-----------------|--|-----------------|---|-----------------|--|-----------------|--|-----------------|---|-----------------|--|-----------------|--|
| 1. | Apologies | | | | | | | | | | | | | | |
| 2. | Letters a) 24 August Meeting – DRAFT Convener’s letter to Cabinet Member | | | | | | | | | | | | | | |
| 3. | Deprivation of liberty safeguards briefing | | | | | | | | | | | | | | |
| 7. | Timetable of Work <i>Please note meeting dates and venues</i> <table border="1"><tr><td>25/10/16</td><td>Adult services performance management framework</td></tr><tr><td>22/11/16</td><td>Deprivation of liberty safeguards briefing</td></tr><tr><td>14/12/16</td><td>Mental health – care management & assessment - mental health measure & primary care</td></tr><tr><td>11/01/17</td><td>Invite ABMU to answer questions on performance of mental health</td></tr><tr><td>08/02/17</td><td>Adult services performance management report</td></tr><tr><td>08/03/17</td><td>Engagement with Western Bay on regionally provided services and performance</td></tr><tr><td>05/04/17</td><td></td></tr></table> | 25/10/16 | Adult services performance management framework | 22/11/16 | Deprivation of liberty safeguards briefing | 14/12/16 | Mental health – care management & assessment - mental health measure & primary care | 11/01/17 | Invite ABMU to answer questions on performance of mental health | 08/02/17 | Adult services performance management report | 08/03/17 | Engagement with Western Bay on regionally provided services and performance | 05/04/17 | |
| 25/10/16 | Adult services performance management framework | | | | | | | | | | | | | | |
| 22/11/16 | Deprivation of liberty safeguards briefing | | | | | | | | | | | | | | |
| 14/12/16 | Mental health – care management & assessment - mental health measure & primary care | | | | | | | | | | | | | | |
| 11/01/17 | Invite ABMU to answer questions on performance of mental health | | | | | | | | | | | | | | |
| 08/02/17 | Adult services performance management report | | | | | | | | | | | | | | |
| 08/03/17 | Engagement with Western Bay on regionally provided services and performance | | | | | | | | | | | | | | |
| 05/04/17 | | | | | | | | | | | | | | | |

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CITY AND COUNTY OF SWANSEA

Dinas A Sir Abertawe

Councillor Jane Harris
Cabinet Member, Adults
& Vulnerable People

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**Overview &
Scrutiny**

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Adult Services/03

116/09/2016

Summary: This is a letter from the Adult Services Scrutiny Performance Panel to The Cabinet Member for Services for Adults and Vulnerable People following the meeting of the Panel on 24 August 2016. It sets out their views and concerns about learning disabilities.

Dear Councillor Harris,

Adult Services Scrutiny Performance Panel, 24 August 2016

We considered assessment and care management of learning disabilities. The panel examined the learning disability population in Swansea and current levels of demand based on existing data. The panel also considered the social work assessment process, what was taken into account when assessing need, how this translated into services and support for people and how people were supported through the transition from child and family services to adult services. The panel agreed to write to you after this meeting to inform you about its discussions, concerns and questions; these are detailed below.

Predicted growth in numbers of people with a learning disability

The panel was informed this was due to people living longer and advances in medical science. We were concerned that the predicted growth of 11.9% in people with a learning disability by 2035 exceed the Wales average of 8.2% growth. **The panel would like officers to look into the reasons for this and provide an explanation.**

Social Services and Well Being Act – removal of eligibility criteria

The panel was concerned that the removal of the eligibility criteria would mean that assessing a person's need for services and support would depend on the judgement of the professional carrying out the assessment. The panel

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welcomed and supported the development of a practice framework which would ensure the consistency of approach, and the training programme linked to the framework. Linked to this the panel was keen to understand how the assessments were scrutinised and quality assured and we were informed that this was carried out by team leaders in supervision sessions with social workers.

We asked whether service users would be re-assessed in light of the new act and officers told us that all service users have an annual review and that a new assessment process was in development and would apply to everybody.

Involvement of carers in assessment process

We found that carers were involved in the assessment process if the person undergoing the assessment had capacity and chose to involve their carer. If the person did not have the capacity to make the choice then the carer was involved as a matter of course.

Appealing decisions

We learned that people had the right to appeal and challenge the authority's decision if they were not satisfied with the outcome of their assessment. The appeal was directed to the department and then to Corporate Complaints if they remained unsatisfied.

Defining disability

The panel was interested in understanding how health and the local authority defined disability. Health used IQ as a measure of eligibility for health provided services. Sometimes there would be cases where adult services deemed the person in need of a service from learning disabilities but they were not eligible for a health provided service.

Transition

The panel was pleased that young adults received a full re-assessment on transition from child and family services into adult services. The Transition Team got involved with the young adult at 16 to help ensure smooth transition between the services.

The panel was concerned about some of the management information contained in the client living status breakdown for quarter 1 on page 3 of the management information report. We were concerned that 65 individuals did not appear to have their living status recorded on the PARIS system. The panel felt that this needed to be rectified as this was an important piece of information about an individual. The panel was informed that not all information boxes in the PARIS recording system were mandatory and the system is reliant of what users of the system record. The panel was pleased that this would be dealt with under the new work on the national I.T information management system and supported it. **We asked that officers examine this figure and provide us with a more detailed explanation.**

Helping learning disabled people develop networks

Given the emphasis on enabling people to develop networks and identify their strengths to reduce need for intensive support services we wanted to know how learning disabled people would be helped to achieve this. We found the assessment process to be key as it looked at all the circumstances, including poverty, and strengths of the individual so that tailored support and care could be given; this was driven by the Act and required a change in culture, behaviour and social work practice.

Advocacy Service

The panel sought clarification on the independence of the advocacy service which is a joint commission by ABMU on behalf of the authority. We were informed that the service was impartial, it advocated but did not assess and there were times when the service was at odds with adult services. However, there would be no question of examining funding in light of disagreements.

Domiciliary Care Providers

We questioned what role external providers played in providing domiciliary care when the Council had its own in-house domiciliary care provision and how performance was managed. The panel was informed that the in-house service focused on reablement and complex needs; adult services commissioned external providers for people with long term, non-complex needs. Learning disabled people were not usually considered complex and in the main were supported by external domiciliary care providers.

The panel was assured that if a provider did not meet the required performance standards the department worked with them to improve performance. Regular contract monitoring and visits were undertaken of private providers and the local authority worked with CSSIW if it needed to do targeted work with private providers. The panel was assured that good quality contract monitoring would mean that the quality of externally provided care for long-term, routine, non-complex care would be as good as in-house provided care.

Visits were task and outcome focused and not based on time and the authority quality assured on the basis of what had been delivered by the private providers. The private providers used electronic call monitoring which meant that the authority could take a sample of calls to evaluate as part of its quality assurance process. **We asked officers to provide us with client feedback on services they received from private providers.**

In-house and externally provided domiciliary care

The panel was assured that all the figures relating to the unit costs of in-house and externally provided domiciliary care were correct because of the work that had been undertaken for the commissioning reviews.

We were still keen to understand what affected the difference in the hourly rates for in-house domiciliary care (£26/hr) and external domiciliary care (£14.50). The difference was accounted for by better terms and conditions for

local authority employees and the provision of double-handed rebalement calls. The private sector provided 80% of all packages of care and if there was a desire to shift the balance of care this would mean that large numbers of staff would be TUPE'd across to the employment of the local authority; this, the panel was informed was not practical. Complex care and reablement services were not attractive to the private sector and this was another reason for the differentiation of service.

There was a high turnover of staff in the private sector but often staff left the private sector and joined the in-house team because the local authority offered a higher of pay.

Monitoring in-house domiciliary care

The panel felt that assessing in-house domiciliary care provision was just as important as assessing and monitoring externally provided domiciliary care. The panel was informed that this was an area that the department was focused on as an area for improvement. The department was considering ways it could be more rigorous with the in-house provided services and it had recently introduced electronic call monitoring. This is an area for improvement.

What the panel agreed:

- Officers to provide us with client feedback on domiciliary care services they received from private providers.
- To timetable further work on learning disabilities, in particular, services provided.
- Officers examine the “no fixed abode” figure in the client living status breakdown in the quarter 1 management report and provide us with a more detailed explanation.
- We would like officers to look into the reasons for the projected growth in learning disability numbers in Swansea, which was predicted to be higher than the national average, and provide the panel with an explanation.
- We would like to visit Abergelli special needs day centre, West Cross day centre and Cwmbwrla Day centre to look at these services and engage with the people who use them.

Your Response

We welcome your comments on any matter raised in this letter; a formal response is not required at this time.

Yours sincerely

UTA CLAY

CONVENER, TRANSFORMING ADULT SERVICES PANEL

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Item No 3

Report of the Cabinet Member for Adults and Vulnerable People

Adult Services Scrutiny Performance Panel – 21st September 2016

DEPRIVATION OF LIBERTY SAFEGUARDS

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| Purpose | <ul style="list-style-type: none">The attached report was presented to Corporate Briefing on 4th August 2016 by way of update on the implementation to Deprivation of Liberty Safeguards (DoLS) in Swansea. |
| Content | <ul style="list-style-type: none">The report outlines the current position in Swansea in relation to the volume of DoLS received following the 'Cheshire West' judgement and Swansea's approach to managing it.The report highlights the resource implications related to this as well as the potential financial risk to the Local Authority linked to successful legal challenge. |
| Councillors are being asked to | <ul style="list-style-type: none">Consider the Report |
| Lead Councillor(s) | Cabinet Member for Adults and Vulnerable People |
| Lead Officer(s) | Alex Williams, Head of Adult Services |
| Report Author | Alex Williams alex.williams2@swansea.gov.uk 01792 636249 |

Report of the Head of Adult Services

Corporate Briefing– 4TH August 2016

DEPRIVATION OF LIBERTY SAFEGUARDS

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| Purpose: | To update on the current position relating to Deprivation of Liberty Safeguards (DoLS) with particular reference to the resource implications and potential financial risks. |
| Policy Framework: | None |
| Consultation: | Access to Services, Finance, Legal. |
| Report Author: | Cathy Richards |
| Finance Officer: | Chris Davies |
| Legal Officer: | Lucy Moore |
| Access to Services Officer: | Sherill Hopkins |
| FOR INFORMATION | |

1. Introduction

- 1.1 The Mental Capacity Act Deprivation of Liberty Safeguards (DOLS) provides protection for vulnerable people who are accommodated in care homes or hospitals in circumstances that amount to a deprivation of their liberty and who lack the capacity to consent to the care or treatment they need.
- 1.2 This report strives to inform senior management of the current and historical position with DoLS in Swansea and the associated risks attached.

2. Main Body of Report

- 2.1 On 19 March 2014, the Supreme Court published its judgment in the case of P v Cheshire West and Chester Council and P and Q v Surrey County Council. The judgement has since become commonly known as “Cheshire West”.
- 2.2 This judgment clarified the test and definition for Deprivation of Liberty for adults who lack capacity to make decisions about their care and treatment. The new test (known as the “acid test”) means that a much greater number of service users and patients are now subject to a

deprivation of liberty and will come under the protection of the DoLS procedure. The Supreme Court decided that when an individual who lacks capacity is subject to complete or continuous supervision and control and is not free to leave, this amounted to a deprivation of their liberty.

- 2.3 In Wales, each Local Authority is the recognised Supervisory Body (SB) responsible for assessing and authorising Deprivation of Liberty Safeguards in Care Home settings. The Local Health Board is the Supervisory Body for DoLS in hospitals. The Local Authority's responsibility as Supervisory Body also extends to individuals we have arranged to be cared for in Care Home settings outside the City and County of Swansea.
- 2.4 Prior to the Cheshire West judgement the City and County of Swansea received approximately 33 DoLS applications per year. Since the judgement it has received almost 1200 applications per year. This 40 fold increase is replicated across the UK, however a recent report by CSSIW identified Swansea as having received the highest number of DoLS applications in Wales in 2014/15. This is likely to remain the same for 2015/16 and is in part due to the proportionally high number of care homes in Swansea.
- 2.5 The end to end process for a DoLS is complex and requires robust administrative and information management support. Having received an application from a Care Home (also known as the Managing Authority) each service user will require six assessments. Three of the assessments are undertaken by a Best Interest Assessor (BIA) and the remaining three are undertaken by a Section 12 approved Doctor (s12 Doctor).
- 2.6 The Supervisory body must arrange for the assessments to be completed and authorised within 21 days of receipt for a standard application and within 5 days if the application is urgent.
- 2.7 Each assessment is of course unique and not always straightforward. Fundamental to the process, and subsequent authorisation, is the involvement of the service user, family members, friends and care home staff.
- 2.8 Assessors on behalf of the Supervisory Body must ensure that the service user is appropriately supported by a suitable representative (known as the RPR) and / or an advocate or who must be appointed by the Supervisory Body and consulted with fully throughout the process. An authorisation can only be in place for a maximum of 12 months (shorter periods are recommended) at which point all assessments must be undertaken again.
- 2.9 The assessments must be thoroughly scrutinised by the Supervisory Body who needs to assure itself that all eligibility criteria has been met

and that the restrictions applied to the individual are the least restrictive and proportionate. They must also be assured that the duration and conditions of the authorisation are appropriate and that all assessments are supported by valid evidence and sound professional judgement.

- 2.10 The Local Authority must identify suitably senior staff members to act as the Supervisory Body. This responsible role is currently undertaken by Team Leaders and Principal Officers within Adult Services who do this alongside other duties. Each authorisation can take between one and three hours to properly scrutinise and authorise. The staff member who authorises the deprivation will need to justify the authorisation and represent the Local Authority's decision if required to do so by the Court of Protection.
- 2.11 Since the judgement, the Chief Coroner has also provided guidance clarifying that the death of a person who is subject to DoLS is a "death in state" and this must therefore be reported to the coroner by the doctor and the Managing Authority prior to signing the Death Certificate.

3. General Issues

- 3.1 As a result of the sudden increase in DoLS since March 2014 and the lack of available BIAs all local authorities throughout the UK accrued a significant backlog of applications. Without additional resources it has been difficult to meet this demand and fulfil our statutory obligations. This is a significant risk to the local authority in terms of legal challenge and financial penalty.
- 3.2 When an application for a DoLS is received by the Local Authority (SB) there is an implied acknowledgement of the Deprivation of Liberty. If the deprivation is not assessed and authorised within the prescribed timescales and the person continues to be deprived of their liberty, then it is a clear breach of human rights (article 5).
- 3.3 If an unlawful deprivation of Liberty is challenged in the Court of Protection the Local Authority, as Supervisory Body, will be liable to pay between **£3,000 and £4000** for every month the deprivation has continued without authorisation. The Managing Authority will not be accountable for any breaches in this process. The amount quoted above does not include any other penalties such as damages that the Judge feels it can and should award nor does it include legal fees or court costs. These additional costs could easily double or triple these figures.
- 3.4 A number of legal firms locally and nationally have already identified delays in processing and authorising a DoLS as a potential opportunity for challenge and the number of challenges is steadily increasing. Neighbouring authorities are also reporting the same concerns in relation to this. It is unfortunate that even if the Local Authority gets to a

position where it is able to meet all the statutory timescales for DoLS the historical delays and gaps in authorisations can still be challenged.

4. Progress made

- 4.1 Soon after the judgement in March 2014, CCS made a decision to train all social workers in adult services as Best Interest Assessors. The rationale for doing this was not only to reduce our reliance on costly external assessors but also because it felt that the skill of assessing a person's best interests prior to and throughout an admission to care is fundamental to good social work practice and to achieving better outcomes for individuals. This training has been provided by Swansea University and has been a joint approach with our colleagues in the ABMU Local Health Board.
- 4.2 City and County of Swansea has now trained 93 Social Workers as Best Interest Assessors which means that this way of working is now becoming an integral part of Social Work practice. As a result of this CCS no longer relies on externally commissioned assessors except when urgent applications are received or there are pressures on general workload such as sickness or vacancies. This has reduced the cost of managing DoLS considerably. CCS has also trained 15 senior staff members as Supervisory Body signatories who are permitted to authorise the deprivation of liberty.
- 4.3 It is worth noting that even though Social Workers are undertaking the Best Interest Assessor role this unprecedented demand for DoLS has significantly increased their workload. The fact remains that Social Workers are now required to undertake approximately 1200 more lengthy assessments each year without additional resources. Due to the time restraints to complete these assessments, 21 days, this also means that there are additional pressures for the work to be undertaken.
- 4.4 The backlog of assessments which had accrued throughout 2014/15 has been cleared by external assessors and these have been subsequently authorised by the 15 managers who are trained and permitted to sign them off. The majority of the signatory work was undertaken alongside normal workload, however the volume was too significant to manage on that basis. As a result some managers undertook signatory work in their own time at a set fee rate. The cost of this work totalled £6,600 which was minimal in comparison to the cost of re commissioning assessments due to time delays and the potential cost of challenge for prolonged periods of unlawful deprivation.
- 4.5 A dedicated Administrative team has been established who have developed a robust process for successfully managing the complex end to end process for DoLS. In addition to managing the flow of assessments they also deal with a large volume of queries from assessors, advocates, care homes, doctors, coroners and lawyers.

- 4.6 Staff in this team have become experts in this area and they play a vital role in quality assuring the work of the assessors and the Supervisory Body. Their prompt response and attention to detail has been commended by the professionals who have regular contact with them. This approach has proved incredibly beneficial in minimising errors and potential challenge. However in order to continue to meet demand and ensure resilience, we are currently exploring securing additional resources to support this team.
- 4.7 Close collaboration with our legal colleagues means that we are able to better identify and jointly manage high risk and complex cases. The impact of the Cheshire West judgement has been challenging for everyone involved including the Court of Protection who themselves are learning as the impact of the judgement evolves and the previous lack of existing case law in this area. Executive Board has recently agreed to additional funding for 1 FT Legal Executive and 1 PT Legal Executive to support the increased workload in this particular area.

5. Equality and Engagement Implications

- 5.1 An EIA screening form has been completed, with the outcome that a full EIA report is not required. While Deprivation of Liberty Safeguards has clear links with equality and human rights, this report only provides an update on the authority's current position. In addition, the process followed for DoLS is set out in legislation, so is not a local process to which we can make changes.

6. Financial Implications

- 6.1 In order to meet the demand for DoLS prior to the Cheshire West judgement, CCS commissioned external Best Interest Assessors to undertake an average of 33 assessments per year on its behalf. Commissioning external assessors and Section 12 doctors is common practice throughout the UK.
- 6.2 The cost for commissioning an external BIA has remained constant for the last 3 years and currently stands at £120 per 3 assessments. In recent weeks however a number of external assessors have refused to undertake this work at the current fee. This has reduced the number of external assessors available to us.
- 6.3 The fee for a section 12 doctor has also remained constant during this time and is set at £180 per 3 assessments. The total cost for externally commissioned assessments is therefore still currently £300. To date we have not encountered any difficulty in sourcing section 12 doctors to undertake assessments and this will always remain an externally commissioned piece of work for which we have to pay. There are however marked differences in the quality of doctors' assessments and as such we are considering ceasing to use some doctors which will

consequently reduce the pool available to us.

- 6.4 The cost of responding to DoLS applications in Swansea prior to the judgement was approximately £10,000 per year. In 2015/16 £193,283 was spent on DoLS. Welsh Government provided each Local Authority with funds to assist with this and in 2015/16 Swansea's allocation totalled £12,640. We are still awaiting confirmation as to whether a similar sum of money will be available again in 2016/17.
- 6.5 Whilst the above is the actual cost of implementing DoLS, it does not take account of the staff salaries dedicated to the process which includes 50% of the time of a Grade 9 member of staff to manage the administration process, 3 FTE Grade 4 Administration Officers and 1 FT Legal Executive and 1 PT Legal Executive. In addition, significant Officer time is required to complete BIAs and authorisations.
- 6.5 Independent BIAs in England are currently setting their fees at between £300 and £500 per 3 assessments and Independent BIAs in Wales are requesting that this higher rate fee is standard across the UK. If this is agreed then the cost of commissioning external BIAs will rise significantly.
- 6.6 At the time of the judgment, similar to every other Local Authority in Wales, CCS had not specifically trained its Social Workers to undertake Best Interest Assessments for the purpose of DoLS. This meant that we were heavily reliant on externally commissioned Assessors.

7. Legal Implications

- 7.1 As predicted the volume of DoLS applications has not subsided since 2014 and this is compounded by the requirement to re assess (i.e undertake all 6 assessments again) for every person at least once per year. Whilst our social work teams are working hard to keep up with the demand the relentless flow is having a significant impact on their workload. As a result we are still unable to meet all the required timescales and could be subject to challenge on any one of these at any time.
- 7.2 Having cleared the previously accrued backlog from 2014/15 we had anticipated that Social Work teams would be able to manage the "normal" flow of approximately 20 applications per week. Unfortunately due to staffing difficulties within the teams we have recently accrued a further backlog of 100 applications awaiting assessment and authorisation. Some of these date back to April 2016. Many of the doctors' assessments have been completed on these cases and it is the BIA element that has not yet been undertaken.
- 7.3 This situation is again inevitably impacting on statutory timescales, many of which have now been breached. It is also unfortunate that the time lapse between the completion of the doctor's assessments and

the BIA assessments presents another challenge in terms of validity (i.e. the BIA will potentially be relying on an outdated mental capacity assessment). It is worth acknowledging that this position is similar for most Local Authorities across Wales. There are some examples where there is a 3 month delay between the Mental Capacity assessments and the BIA. This not only opens a risk to the LA, but places more responsibility upon the signatories to scrutinise the assessments to determine if the capacity assessment is still valid, in light of capacity being time and issue specific and if they determine it is not there will be an duplication in the cost to have an updated capacity assessment.

- 7.4 CCS was taken to court for the first time in relation to a DoLS at the end of last year. In the specific case, the Court found that there had been procedural breaches in authorisation, where there had been gaps in the authorisation resulting in a person being unlawfully deprived and found that we had not implemented appropriate safeguards in appointing the RPR. Costs were awarded against the Authority in this case to the sum of £8,500
- 7.5 Inevitably, the fact there has now been one successful challenge will open the flood gates for other potential challenges and now that the Court of Protection is no longer a private court, the cases will be publicised and will inform the public as to this recourse.
- 7.6 Having undertaken a desk top analysis of the potential procedural breaches in Swansea we estimate that damages for each case could range between £3,000 and £80,000 if challenged. Some of these figures are particularly high due to the fact that damages can be backdated to the point of the DoLS application. If additional damages and costs are also awarded then this figure could rise to far more significant sums.
- 7.5 The Local Authority has recently received a further challenge in relation to another historic DoLS case and we are currently going through the court process. If the Court finds in favour of the Applicant the Authority could potentially face significant damages being awarded against it.

Background Papers: None.

Appendices: None

FOR INFORMATION