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Bwrdd Iechyd Prifysgol
Abertawe Bro Morgannwg
University Health Board



Meeting Date	8th August 2019	Agenda Item	4.3
Meeting	Mental Health and Mental Capacity Act Legislative Committee		
Report Title	Supervisory Body Deprivation of Liberty Safeguards Report		
Report Author	Jason Crowl, Nurse Director, Primary and Community Service Delivery Unit		
Report Sponsor	Gareth Howells, Director of Nursing and Patient Experience		
Presented by	Gareth Howells, Director of Nursing and Patient Experience		
Freedom of Information	Open		
Purpose of the Report	This report is to provide the Committee with an update in relation to the responsibility of the Supervisory Body in respect to Deprivation of Liberty Safeguard (DoLS).		
Key Issues	<ul style="list-style-type: none"> Allocated resource is not sufficient to fund assessment capacity to enable the Supervisory Body to meet its obligations. Moving to a directly employed model has improved the Assurance role of the Supervisory Body The Supervisory Body is more informed around the quality of training, application of process and procedures used by the managing Authorities. The Supervisory Body will not be able to meet its responsibilities without efficient assessment capacity. 		
Specific Action Required <i>(please ✓ one only)</i>	Information	Discussion	Assurance
			✓
Recommendations	<p>The Committee is requested to note the current activity delivered in Q1 and the following recommendations.</p> <ol style="list-style-type: none"> Supervisory Body will be required to exceed its financial allocation in order to discharge its obligations Supervisory Body recruits further BIA role (1 WTE) within the cost envelope used for contracted BIA roles to reduce reliance on externally contracted BIA 		

	<ol style="list-style-type: none"> 3. Supervisory Body seeks additional funding through top slicing of existing Managing Authority BIA resource and end the Internal BIA rota and proceed to recruit further BIA roles. 4. Support the ongoing work to reduce unnecessary referrals and the number of unnecessary urgent requests. 5. In preparation for LPS establish a LPS focus group set up to scope the impact and implementation for LPS including LPS objectives, costings, timescales for the training and development needs for SBUHB workforce on the new LPS and deliverable as to ensure LPS service meets the legislative compliance with the new LPS requirements.
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DEPRIVATION OF LIBERTY SAFEGUARDS (DOLS) PROCESS UPDATE

1. INTRODUCTION

This report is to provide the Committee with an update on the Deprivation of Liberty Safeguard (DoLS) Process.

2. BACKGROUND

The Mental Capacity Act Deprivation of Liberty Safeguards provides a legal framework to protect vulnerable adults, who may become, or are being deprived of their liberty in a care home or hospital setting. These safeguards are for people who lack capacity to decide where they need to reside to receive treatment and/or care and need to be deprived of their liberty, in their best interests, otherwise than under the Mental Health Act 1983 (MCA Code of Practice). The safeguards came into force in Wales and England on the 1st April 2009.

The Health Board has a statutory responsibility to ensure patients under its care can be assessed within agreed time scales. The Corporate Safeguarding Team is working with the Supervisory Body (Primary Care & Community Services Delivery Unit) and the Managing Authorities (Singleton, Morriston, Neath Port Talbot,

Gorseinon, Mental Health & Learning Disabilities Service Delivery Units) to address some of the issues which are contributing to the delays.

3. QUARTER 1 ACTIONS

Actions Undertaken by Supervisory Body for Quarter 1

To enable the Primary and Community Services Delivery Unit to discharge its functions as the Supervisory Body the following actions have been completed.

Internal Audit action Plan

The DoLS Improvement group have continued to work on and completed actions as identified by the audit. A repeat Audit is commencing on 29th July 2019 and expected to report in September 2019.

Strengthening Supervisory Functions

Two highly experienced BIA have commenced their roles from April 2019 as part of the ongoing responsibility of the Supervisory Body to improve safeguards. The level of support required by Managing Authorities to improve their processes has been greater than anticipated, occupying 2 days a week from each practitioner. the following actions have been completed.

- Establishment of BIA support group which is led by the Supervisory Body. This is providing support around existing responsibilities, compliance with legislation and preparation for the implementation of LPS.
- Frequent visits to Managing Authorities to assess training, understanding, process and compliance. These visits have highlighted the need to strengthen training around legislation, procedures and to review the existing training contracts.
- Commenced an audit of Managing Authorities compliance with appropriate care plans and BIA recommendations. This is a key quality assurance requirement of the Supervisory Body and until now has never been completed.
- Working with Managing Authorities to improve the quality of the DoLS care plans which have been of a poor quality and inconsistent. A set of dedicated Core Care Plans have been developed to provide greater assurance in this area and reduce the need for unnecessary DoLS referrals and Urgent requests. This will be implemented during Q2.
- Working with Managing Authorities in establishing a referral triage function which has provided further information around next steps.
- Reassessing the All Wales Referral Prioritisation Tool. This was ratified at Safeguarding Committee and will be implemented in Q2.

- Reducing commissioning of unnecessary Section 12 assessments has been scoped and will be developed in Q2. Based on work cross Wales

Implementation of Referral Triage Scheme

Previously all referrals were accepted by the DoLS Administrator and automatically allocated for assessment. The DoLS dashboard has helped identify the referral trends which indicated inconsistencies in practice and approach. To help manage referrals and develop further information around referral trends the dedicated DoLS team have implemented a professional referral triage function where all referrals are discussed with the Managing Authorities. The following themes have been identified:

- Identifying incomplete / incorrect information in referrals which would undermine authorisation – incorrect dates/ not identifying criteria for DoLS;
- Providing advice and support should improve appropriateness and quality of referrals in future;
- Identifying when standard assessments not required ie discharged, regained capacity, no longer Deprived of liberty;
- Identifying when the referral only requires a BIA which supports saving on s12 allocation;
- Offering advice prior to a referral – diverting need for a referral;
- Offering support and advice to other BIA's - improving quality and compliance;
- Questioning appropriateness of urgent referrals – reducing number of urgent referrals;

Actions being taken forwards to support Managing Authorities:

- Liaise with training department around training needs- need for greater focus on MA role & practical examples and support;
- Reduce number of inappropriate Urgent Authorisations - will be supported with the prioritisation tool, care plan and amended flow chart;
- BIA advice and support improve quality and appropriateness of referrals , diverting need for referral;
- Continue to identify when can save on s12 (only require BIA required).

Undertake Impact Assessment Meeting Around Proposed Liberty Protection Standards (LPS)

The Supervisory Body has completed a local review meeting and BIA staff have attended various national events around implementation of LPS.

With the Mental Capacity Act 2005 (amendment bill) now became law there will be a replacement of the DoLS with a new scheme called the Liberty Protection Safeguards (LPS).

In preparation for SBUHB with the transfer over to the new scheme of safeguards commencing in October 2020 existing DoLS procedures will continue for at least a twelve month period. All health Boards are recommended to prepare for the change of legislative safeguards and develop an action plan which will need to be approved by the senior management team. No additional funding has been identified for the completion of LPS implementation at this stage.

The LPS establishes a process for authorising arrangements enabling care or treatment which give rise to a deprivation of liberty within the meaning of Article 5(1) of the European Convention on Human Rights (ECHR), where the person lacks capacity to consent to the arrangements. It also provides for safeguards to be delivered to people subject to the scheme.

At present the Welsh government is currently working on the LPS code of practice, drafting regulations. Timescales when this will be made publicly available before spring 2020.

LPS scheme arrangements will cover hospitals and care homes supported living, shared lives and private and domestic settings. The LPS can also provide authorisation of day centre and transport arrangements. Authorisations can also be for multiple settings built into the person's care plan.

LPS will apply to people aged 16 or over in line with the MCA 2005(16-17 year old)

A Responsible Body will replace Supervisory body, as the agency responsible for authorising the LPS arrangements that amount to a deprivation of liberty.

There is likely to be an increase in volumes of assessment request for SBUHB will be as a consequence of care and treatment arrangements are carried out mainly through the provision of NHS continuing health care, nursing homes, as the responsible body will be the local Health Board in Wales.

The LPS will have a pre-authorisation review, and can be completed by either an approved mental capacity professional (AMCP), or 'some other health or care

professional' the government will set out in the regulations who can undertake a pre authorisation review; as this not normally be expected to be a AMCP, unless for example the person is objecting to their care and treatment , or family, advocate IMCA raises an objection to the current or proposed care and treatment arrangements.

Recruitment of Dedicated BIA Roles

The Unit appointed two dedicated BIA roles to support the delivery of the Supervisory Body Functions. The roles have been instrumental in the delivery of improved support to high referral sites and have introduced a triage process and piloting the All Wales DoLS referral prioritisation tool.

However, activity performance has only marginally improved in Q1 compared to the same period last year which is due to the overall capacity of the available BIA resource.

The existing plan has been to reduce the reliance on the externally contracted BIA roles and use internal Health Board BIA's who are currently employed in substantive other roles within Service Delivery Units. This model has been challenging as due to staffing pressures delivery units have not been able to release staff. The allocated 2 days a month has not been released for use to the Supervisory Body and does not allow functions of the body to be delivered. This results in the Supervisory Body having to fund external BIA and there is not enough capacity to deliver assessments within the agreed time scales.

The analysis in Appendix 2 shows that triaging has reduced the number of referrals in comparison to the preceeding period with a reduction in Section 12 assessments allocated. There are currently 2 dedicated Supervisory Body BIA and 14 BIA from Delivery Units. Of the 68 assessments completed by Internal BIA only 9 were provided by Internal BIA from Delivery Units. 56 were delivered by the dedicated BIA roles. This confirms that the internal Delivery Unit BIA model is ineffective for continued use.

The dedicated BIA roles have added additional value in terms of leading the DoLS transformation plan, the support group, changes in procedures and undertaking quality assurance around Managing Authorities. The Supervisory Body recommends recruiting a further substantive WTE BIA which is within the anticipated spend envelope for externally commisisoned BIA to improve consistency and service delivery.

4. FINANCIAL IMPLICATIONS

There is no identified budget for DoLS activity and it is based on cost but does not cover the full actual cost for delivering the service within the required standards. The year to date position is £31,000 overspend against the allocated budget.

The BIA resource held in the 5 Managing Authorities as part of their contribution to BIA equates to 15 hrs a month per role. Which is the equivalent of funding for 1.4 WTE Band 6 roles.

If this allocation was top sliced from all Units and added to the resources available for External BIA (equivalent to 1 WTE band 6 post) and added to the existing 2 Band 6 Dedicated BIA it would provide a total funded resource of 4.4 BIA roles for the Supervisory Body to discharge its duties.

A review of the service model with HDHB has shown a difference in how the two services are funded. Considering the similar level of referrals the comparison has highlighted that the level of funding available for the SBUHB Supervisory Body is significantly lower than that of HDHB and should remain under review in light of the implementation of LPS.

	Current SBHB resource	HDHB
Service Model	DoLS service part of Long Term Care Team Service Manager Band 8b	DoLS Service part of Long term Care team Service Manager 8B
Referrals	706	792
Coordinator role	No	Band 7
BIA	2 Band 6	4 Band 6
Administrator	1 Band 4	1 Band 4
MCA Support Available in the Health Board	No	1 band 7 and 2 Band 6
Cost Total	£111,348	£379,188

5. RECOMMENDATION

The Committee is requested to note the current activity delivered in Q1 and the following recommendations.

- 1 Supervisory Body will be required to exceed its financial allocation in order to discharge its obligations;
- 2 Supervisory Body recruits further BIA role (1 WTE) within the cost envelope resource used for contracted BIA roles to reduce reliance on externally contracted BIA;

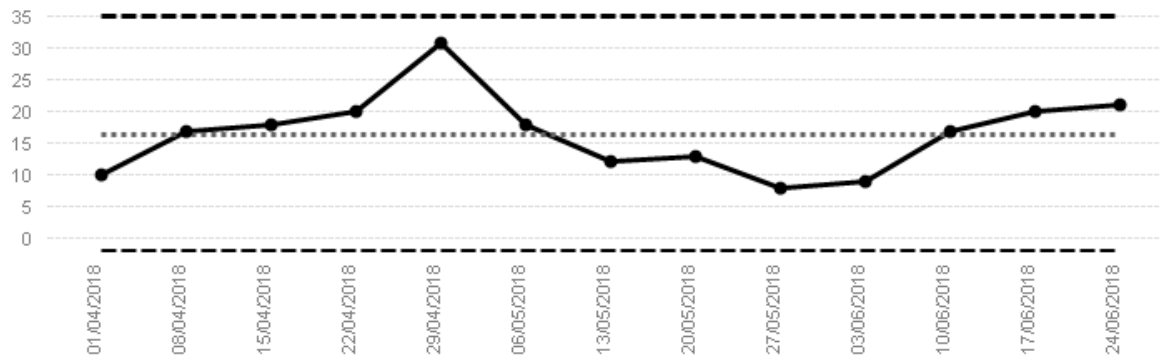
- 3 Supervisory Body seeks additional funding through top slicing of existing Managing Authority BIA resource and end the Internal BIA rota and proceed to recruit further BIA roles;
- 4 Support the ongoing work to reduce unnecessary referrals and the number of unnecessary urgent requests;
- 5 In preparation for LPS establish a LPS focus group set up to scope the impact and implementation for LPS including LPS objectives, costings, timescales for the training and development needs for SBUHB workforce on the new LPS and deliverable as to ensure LPS service meets the legislative compliance with the new LPS requirements;

Appendix 1

DoLS Supervisory Body Dashboard 1st April 2019 – 30th June 2019

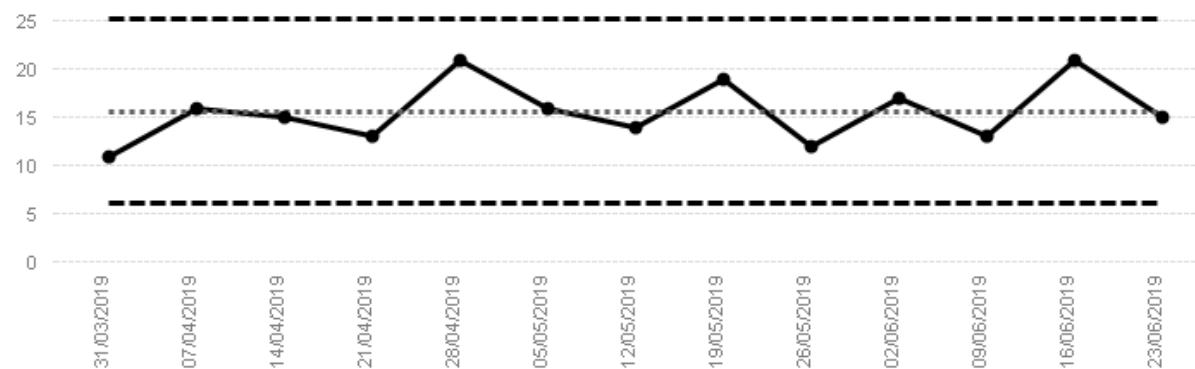
Referral Q1 2018/19

SPC Chart for DOL Referrals over time (01-Apr-18 to 30-Jun-18) 3 Sigmas

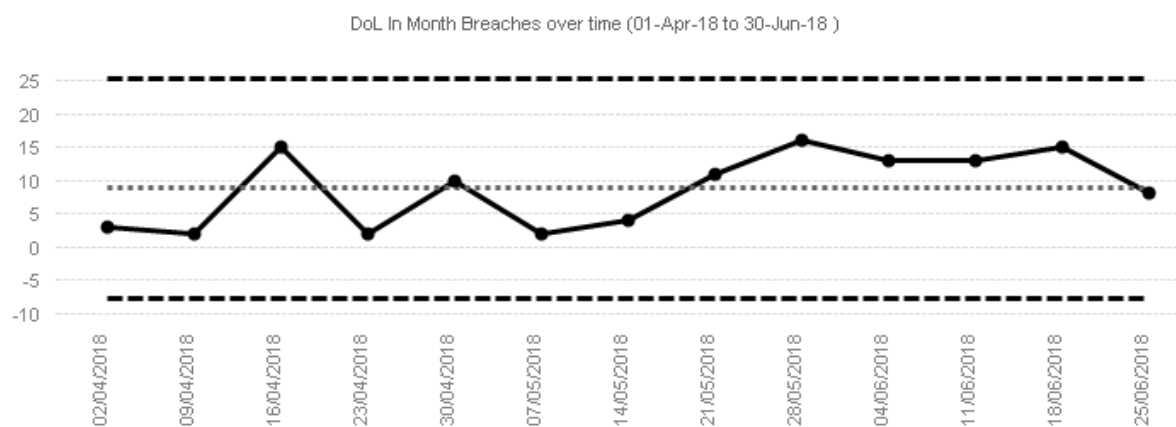


Referral Q1 2019/20

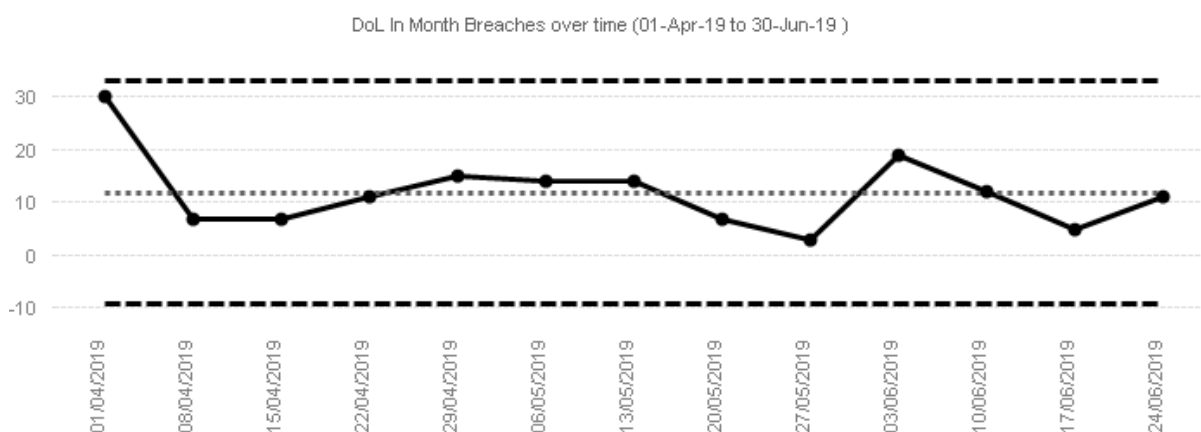
SPC Chart for DOL Referrals over time (01-Apr-19 to 30-Jun-19) 3 Sigmas



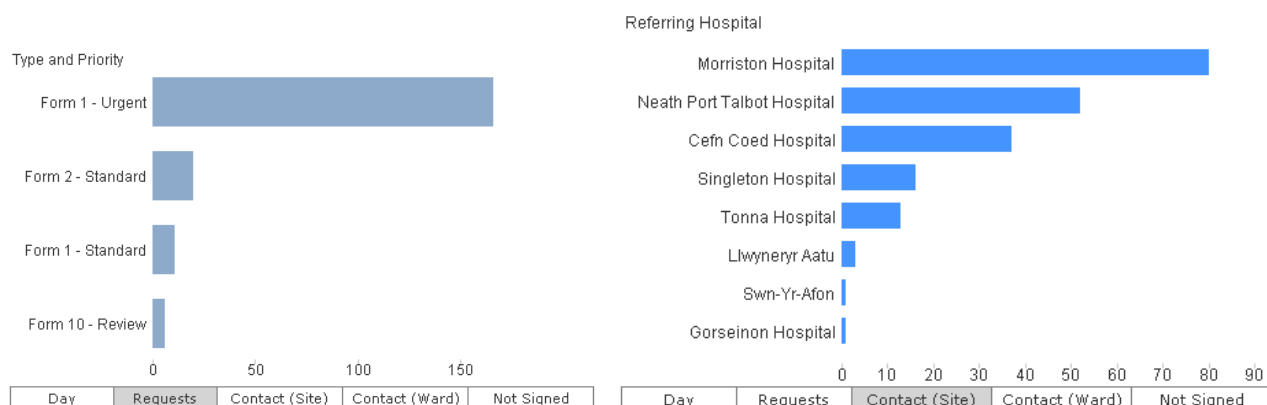
Breaches Q1 2018/19



Breaches Q1 2019/20



Referral



Area	Q1 2018/19	Q1 2019/20
Referrals	214	203
Decision (Sign off)	218	241
Section 12	172	146
Breaches	114	155
Within	54	90
Other	29	0
BIA Reviews	145	135
Granted Authorised	110	119
Refused	108	117

Appendix 2

DoLS Audit		
	2018/19	2019/20
	Qtr 4	Qtr 1
No Referrals	255	203
Sec 12 allocated	227	171
Use Previous Sec 12 reports	11	13
Sec 12 not allocated (due to discharge, died)	17	21
Total Nos BIAs Allocated	218	171
BIAs not allocated (due to discharge, died)	37	32
Internal BIAs	58	68
DoLS BIA		56
External BIAs	157	104
Still Being Worked on		15
No of Independent BIAs	13	15
No of Internal BIAs	15	16
Sec 12 Drs Used	6	5

Governance and Assurance							
Link to corporate objectives (please ✓)	Promoting and enabling healthier communities		Delivering excellent patient outcomes, experience and access		Demonstrating value and sustainability		Securing a fully engaged skilled workforce
			✓				✓
Link to Health and Care Standards (please ✓)	Staying Healthy	Safe Care	Effective Care	Dignified Care	Timely Care	Individual Care	Staff and Resources
		✓	✓				
Quality, Safety and Patient Experience							
Report outlines							
Financial Implications							
Report identifies the current financial challenges and lack of funding for Supervisory Body Function.							
Legal Implications (including equality and diversity assessment)							
Report reference the legal framework which is current and the future LPS implementation							
Staffing Implications							
Report outlines the current staffing capacity issues and identifies the potential for future staffing model to become compliant.							
Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)							
Report makes reference to future legislation.							
Report History	N/A						
Appendices	N/A						

