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Health Board



Meeting Date	11 May 2023	Agenda Item	4.1
Report Title	Court of Protection Cases Update Report		
Report Author	Hazel Lloyd, Director of Corporate Governance		
Report Sponsor	Hazel Lloyd, Director of Corporate Governance		
Presented by	Hazel Lloyd, Director of Corporate Governance		
Freedom of Information	Closed		
Purpose of the Report	To provide the Committee with an update on the Court of Protection Cases ongoing within the Health Board.		
Key Issues	<p>Currently the Health Board is working towards managing all Court of Protection cases via the Datix Management System. There are currently 44 matters on Datix, falling under the remit of Court of Protection Cases and they fall within the following categories:</p> <ul style="list-style-type: none"> • S49 Report • Challenging an Authorisation • Welfare Order • Cases with increased complexity <p>Most of the cases currently fall under the Challenging of Authorisation category.</p> <p>Currently, these cases are managed by the Service Group and Executive Directors are reviewing these arrangements.</p>		
Specific Action Required <i>(please choose one only)</i>	Information	Discussion	Assurance
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recommendations	<p>Members are asked to:</p> <ul style="list-style-type: none"> • Note the contents of the report and identify any future reporting requirements. 		

COURT OF PROTECTION CASES - UPDATE REPORT

1. PURPOSE

To provide the Committee with an update on the Court of Protection Cases and how they are managed within the Health Board.

2. BACKGROUND

A Supreme Court judgement, in March 2014, made reference to the 'acid test' to see whether a person is being deprived of their liberty, which consisted of two questions:

- Is the person subject to continuous supervision and control; and
- Is the person free to leave?

Deprivation of Liberty Safeguards (DoLS) provide a locally managed system for ensuring those who lack capacity can have decisions made in their best interests formalised and reviewed. Where the individual, family or carers' are not happy with the decisions made, they can challenge this via the Court of Protection. The right to representation and to challenge a deprivation provided by the Mental Capacity Act.

The Court of Protection has the power to decide if a person lacks capacity to make decisions for themselves, and then to decide what actions to take in the person's best interests. If the Court agrees that the individual lacks capacity, they can then review the best interest decisions made to ensure that they meet the criteria of the least restrictive intervention. Therefore, if the person is not content with the DoLS they can challenge either the capacity assessment which resulted in their being subject to a DoLS or the detail of the order such as where they live or what they can do.

Once a patient has been deemed to lack capacity and has a Deprivation of Liberty Safeguard (DoLS) in place, they have the right to seek support from the Court of Protection to challenge that placement. When a patient challenges the placement this is taken by an advocate known as a litigation friend or a solicitor who will represent the patient's interests in Court.

3. GOVERNANCE AND RISK ISSUES

The Health Board is currently at the start of a project to ensure all Court of Protection cases are captured on Datix. This will ensure there is a centralised place where all information in relation to these cases is stored, managed and data can then be obtained easily in relation to these cases.

As the majority of Court of Protection cases are managed by the Mental Health and Learning Disabilities Service Group, the project has started with them. The initial step has been for the team to input the cases onto the Datix system and there are currently 40 cases logged on the system for the Health Board, reduction of 2 since the last report. Table one sets out the type of case by each Service Group.

Table 1

Type of Case	Service Group			
	Mental Health & LD	Primary Care	Singleton & NPT	Morrison
S49 Report	8	-	-	-
Challenging an Authorisation	14	3	-	1
Welfare Order	5	-	-	-
Cases with increased complexity	6	2	1	-

3.1 S49 Report

Under section 49 of the Mental Capacity Act 2005 (MCA), the Court of Protection can order reports from NHS health bodies and local authorities when it is considering any question relating to someone who may lack capacity and the report must deal with 'such matters as the court may direct.'

An order under section 49 of the MCA does place an obligation on the NHS to comply, although it is for the NHS organisation to determine the appropriate person to complete the report. There is no right to charge a fee for preparing a section 49 report.

The request for a S49 report is generally for a psychiatric assessment of the individual's capacity, often in a particular area of their life, such as where they live or financial matters. The completion of the report will require the clinician to meet with the person and key individuals involved in the care including family and care providers. They will need to collate the information provided and provide a report to the court which will normally run from 50 to 100 pages.

The Health Board arranged staff training in relation to s49 reports, which was successful and is now looking to disseminate that training out further to relevant staff members. The training was provided by the Solicitors in Legal & Risk Services and will consist of the following topics:

1. What are s49 reports
2. What is a party expected to do before getting an order
3. What is the Health Board expected to do in advance of a court making an order
4. Who is responsible for responding to an order
5. What are the potential valid reasons for not complying with an order
6. What steps should be taken to challenge an order
7. What form should a report take?

The training aims to assist the medical staff who receive requests to complete s49 reports, often within a short timescale, despite their clinical commitments.

3.2 Challenging an Authorisation

The person detained under the authorisation challenges the capacity assessment or the best interest decisions made under the DoLs, with regards to the degree of restriction implemented.

In general, when a person challenges the DoLs Authorisation the first stage is to decide if there is agreement as to the capacity of the patient in relation to the issues in question. In many cases, the capacity of the individual is not in question rather the restrictions that are placed on them. The process will vary in the specifics but follows the general pattern.

- Collection of written information including care plans, risk assessments and best interest decisions
- Preparation of a balance sheet in relation to the issues comparing options
- Advocates meetings and round table discussions
- Court orders and court hearings to confirm next actions and decisions

3.3 Welfare Order

A Deprivation of Liberty Safeguard to be implemented on a person in their own home or in social care. The orders have to be individually agreed by the court rather than by the Supervisory body.

3.4 Cases with increased complexity

There are a number of cases where the situation is more complex

- Where there are safeguarding concerns
- Where the person's capacity is in relation to eating disorders
- Where the concern is in relation to urgent medical treatment.
- Where there are concerns about the support provided by the person's families
- Where a decision was required by the Court of Appeal in terms of what is in the patient's best interest.

4. FINANCIAL IMPLICATIONS

There are financial costs in terms of managing these cases, which are presently being coordinated for the financial year of 2023/24 in terms of the legal costs and costs of staff time to support the management of these cases.

5. RECOMMENDATION

The Committee members are asked to note the contents of the report and highlight requirements for future reports.

Governance and Assurance		
Link to Enabling Objectives (please choose)	Supporting better health and wellbeing by actively promoting and empowering people to live well in resilient communities	
	Partnerships for Improving Health and Wellbeing	<input checked="" type="checkbox"/>
	Co-Production and Health Literacy	<input type="checkbox"/>
	Digitally Enabled Health and Wellbeing	<input type="checkbox"/>
	Deliver better care through excellent health and care services achieving the outcomes that matter most to people	
	Best Value Outcomes and High Quality Care	<input checked="" type="checkbox"/>
	Partnerships for Care	<input type="checkbox"/>
	Excellent Staff	<input type="checkbox"/>
	Digitally Enabled Care	<input type="checkbox"/>
	Outstanding Research, Innovation, Education and Learning	<input type="checkbox"/>
Health and Care Standards		
(please choose)	Staying Healthy	<input type="checkbox"/>
	Safe Care	<input checked="" type="checkbox"/>
	Effective Care	<input type="checkbox"/>
	Dignified Care	<input type="checkbox"/>
	Timely Care	<input type="checkbox"/>
	Individual Care	<input type="checkbox"/>
	Staff and Resources	<input type="checkbox"/>
Quality, Safety and Patient Experience		
Cases where the patient lacks capacity must be managed appropriately to ensure decisions are made in the best interest of the patient.		
Financial Implications		
Often these case are complex, sensitive and time critical and require management at short notice. If we do not manage the cases appropriately, then there may be cost penalties as well as increased solicitors costs.		
Legal Implications (including equality and diversity assessment)		
If the Health Board does not manage these cases appropriate, then this will result in an unlawful deprivation of liberty.		
Staffing Implications		
As stated, these cases are time sensitive and often place pressure on staff in terms of dealing with them timely versus their day to day clinical commitments.		
Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)		
Report History	First report to the Committee on the type of cases being managed in the Health Board.	
Appendices	No appendices	