

Safeguarding Overview and Scrutiny Committee - Thursday 20 April 2023

Deprivation of Liberty Safeguards

Recommendation

I recommend that the Committee:

- a. Notes the latest position with management of Deprivation of Liberty Safeguards applications, including the resource implications.

Local Member Interest:

N/A

Report of Councillor Julia Jessel, Cabinet Member for Health and Care

Summary

What is the Overview and Scrutiny Committee being asked to do and why?

1. The Overview and Scrutiny Committee are being asked to consider an update on the management of Deprivation of Liberty Safeguards applications.

Report

Background

2. The Council has a statutory duty to manage Deprivation of Liberty Safeguards (DoLS) applications. This is a procedure prescribed in law when it is necessary to deprive a person of their liberty in a hospital or care home if they lack capacity to consent to their treatment and care.
3. The term 'deprivation of liberty' can encompass a range of different restrictions that people may experience. The majority of applications relate to older people who have dementia and are deprived of their liberty because either the hospital ward or the care home has a locked door. This is entirely appropriate to keep them safe from harm and does not compromise the well-being of the individual.
4. The process of managing DoLS applications is prescribed in law and is time consuming. It requires 6 assessments completed by at least two different professionals to determine that the restrictions are in the

person's best interests. All aspects need to be satisfied and have to be agreed by a representative of the Council. These are all then approved by the Court of Protection. Once approved, DoLS last for up to one year (it may be less) and then a reapplication has to be made, which requires the same process as the initial application.

Liberty Protection Safeguards

5. It had been expected that DoLS would be replaced by new legislation and a new process called Liberty Protection Safeguards by October 2022. This would have reduced the demand and time requirements due to less demand on specialist workforce.
6. Liberty Protection Safeguards has unfortunately been further delayed with no implementation date identified in the foreseeable future. It is unlikely that Liberty Protection Safeguards will be implemented before October 2024 and a possibility that they will be delayed beyond this or abandoned altogether.

Activity and waiting list

7. Staffordshire is a large county and has a lot of care homes, which means we receive a high number of DoLS applications compared to other local authorities. During 2022/23 we received an average of 550 applications monthly, an increase of more than 20% compared to the average of 450 applications monthly in 2021/22.
 8. Analysis of DoLS applications suggests that up to half may be reapplications, these rising numbers of reapplications are impacting on the overall increase in applications. Further analysis will explore the precise breakdown of initial applications vs reapplications.
 9. Historically we had a large waiting list of DoLS applications. On 8th March 2019 the Local Government and Social Care Ombudsman published a report¹ finding that the Council had unlawfully decided not to carry out assessments of low and medium priority applications and significantly delayed assessing the remaining applications.
 10. Since then we have made a sustained effort to reduce the waiting list. It reduced throughout 2021/22 (Figure 1), and by March 2022 was in a favourable position compared to similar local authorities (Figure 2).
 11. Note that we report all uncompleted DoLS applications as part of these figures whereas some local authorities only report those applications outstanding more than 28 days. We will review our reporting
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methodology to ensure that national comparator data offers a fair reflection of our performance.

Figure 1a: DoLS waiting list – trend and forecast at 500 completed per month

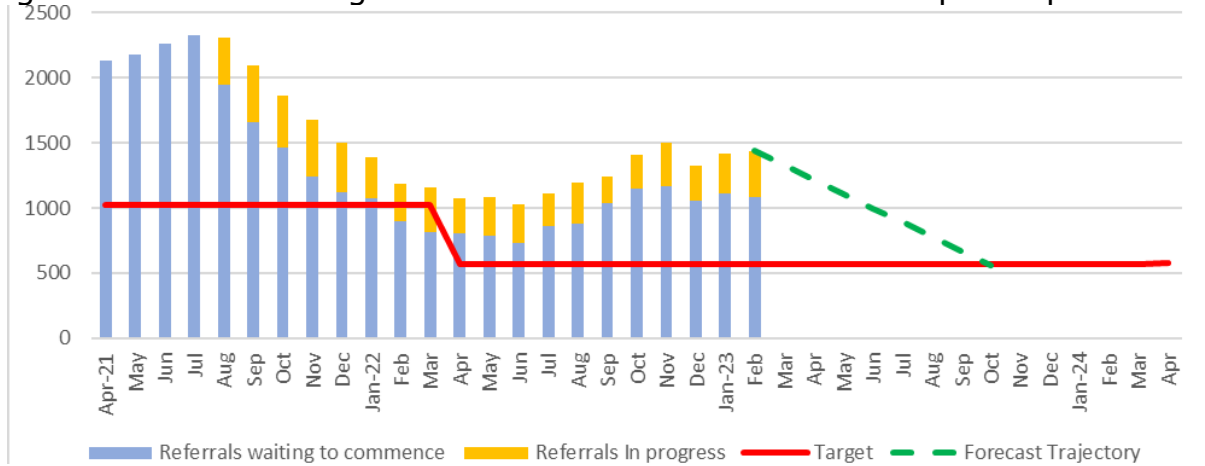
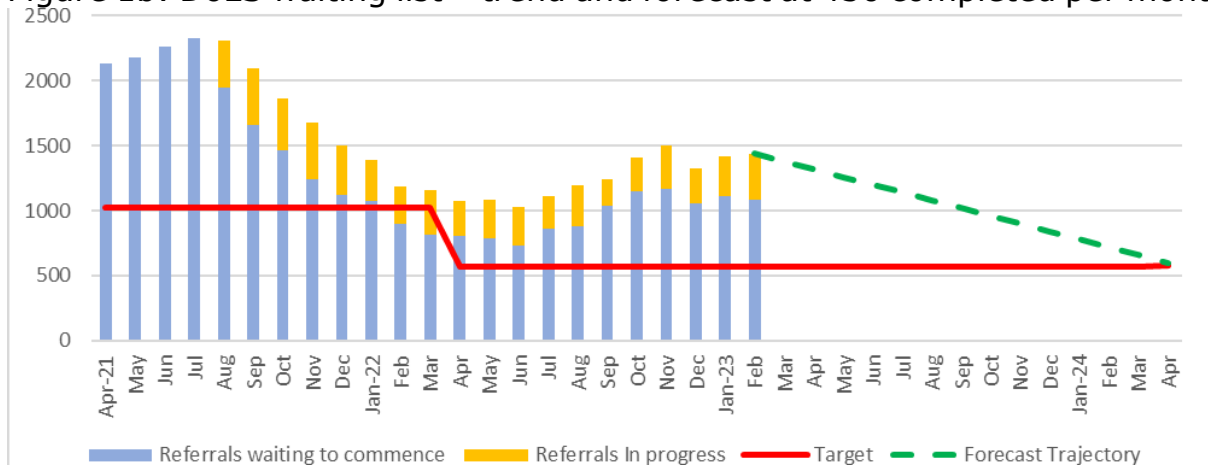


Figure 1b: DoLS waiting list – trend and forecast at 450 completed per month



12. Compared to 13 of our CIPFA comparators in 2021/2022 our numbers of DoLS applications not completed were the lowest. Whilst this year we have seen an increase in our numbers this has been similar for other authorities. Further to this our timescales for completion have continued to improve.

13. We had been aiming to reduce the DoLS waiting list below 500 by October 500. Unfortunately, this was not possible due to the unexpected increase in demand. At the end of February 2023, we had 1440 DoLS applications waiting to be completed.

14. All DoLS applications have been considered and prioritised and are managed accordingly:

- High priority – 148. These include cases where there are enhanced restrictions such as periods of 1:1 care and/or the adult is objecting to the placement or is resistive to the measures in place.

- b. Medium – 9. These are initial applications from mental health hospitals where there are simple measures in place such as a locked door, and the adult is not objecting or resistant.
- c. Low – 1185. These are applications from care homes where there are simple measures in place such as a locked door, and the adult is not objecting or resistant.
- d. Hospital – 98. These are initial and further applications from acute and community and further applications from mental health hospitals where there are simple measures in place such as a locked door, and the adult is not objecting or resistant. They will be closed (withdrawn) at the end of the hospital stay.

15. Of the 1440 outstanding DoLS applications:

- a. 701 have been allocated to Best Interest Assessor or Mental Health Assessor but not yet completed.
- b. 739 are not yet allocated. These are low priority or hospital DoLS applications and the low priority applications include respite/short term care home placements. Any that are permanent care home placements will be allocated and completed, respite/short term care home placements and hospital applications will not usually be allocated – as by the time they can be completed the person will have left the setting. This is a proportionate response as these situations are likely to end after short period and therefore the DoLS applications will no longer be required and can be closed (withdrawn). As a safeguard all of these are considered to determine the nature and intensity of the restrictions and any risk to the individual, and are monitored and reviewed as necessary.

16. Of the 1440 outstanding DoLS applications:

- a. The median length of time waiting is 41 days.
- b. 843 are outstanding more than 28 days.
- c. 43 are outstanding more than one year. These are low priority applications relating to respite/short term care home placements where it has been deemed possible that the individual may have a repeat stay. We are reviewing these to determine whether they need an authorisation and they will either be completed or closed (withdrawn).

2023/24 forecast

17. During autumn 2022 the Council secured additional capacity from an external provider, Action First, to manage the additional demand. This has now been mobilised and the waiting list has resumed a downward

trajectory. We have also made changes to our processes to make them more efficient, including a proportionate response to requests and changes to administration.

18. With the additional capacity now in place we are aiming to complete 450 to 500 DoLS applications per month with an expected ongoing net demand of 300-350 applications per month (550 applications received minus approximately 200 applications subsequently withdrawn, due to the DoL no longer being required). This would reduce the waiting list by around 100-150 approximately per month to reach the target of below 500 within 6 to 9 months.
19. There are two major risks to this: that demand increases further and/or that the additional capacity cannot be sustained. Note that that the more initial DoLS applications we approve the more reapplications we will receive and this is one potential driver of further additional demand. Both the Council internally and Action First are critically dependent on social workers to maintain our capacity and social work recruitment remains difficult.
20. The waiting list will be monitored carefully, and additional capacity secured if sufficient progress is not being made.

Resource implications

21. The additional capacity required to deal with the additional demand will cost c£750K annually. This is being met from underspends elsewhere in the Health and Care directorate to avoid a pressure on the Council's MTFS.

Link to Other Overview and Scrutiny Activity

N/A

Community Impact

No Impact

List of Background Documents/Appendices:

N/A

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