

Final Internal Audit Report

Deprivation of Liberty Safeguards

July 2017

Distribution: Executive Director People (Final only)
 Director of Adult Care and All-age Disability
 Head of Adult Safeguarding & QA
 MCA/DoLS Lead

Assurance Level	Recommendations Made	
Limited Assurance	Priority 1	2
	Priority 2	2
	Priority 3	0

Status of Our Reports

This report ('Report') was prepared by Mazars Public Sector Internal Audit Limited at the request of the London Borough of Croydon and terms for the preparation and scope of the Report have been agreed with them. The matters raised in this Report are only those which came to our attention during our work. Whilst every care has been taken to ensure that the information provided in this Report is as accurate as possible, we have only been able to base findings on the information and documentation provided and consequently no complete guarantee can be given that this Report is necessarily a comprehensive statement of all the weaknesses that exist, or of all the improvements that may be required.

The Report was prepared solely for the use and benefit of the London Borough of Croydon and to the fullest extent permitted by law, Mazars Public Sector Internal Audit Limited accepts no responsibility and disclaims all liability to any third party who purports to use or rely for any reason whatsoever on the Report, its contents, conclusions, any extract, reinterpretation, amendment and/or modification. Accordingly, any reliance placed on the Report, its contents, conclusions, any extract, reinterpretation, amendment and/or modification by any third party is entirely at their own risk.

Please refer to the Statement of Responsibility set out in appendix 3 of this report for further information about responsibilities, limitations and confidentiality.

Contents

Page

Executive Summary

1. Introduction.....	3
2. Key Issues.....	3

Detailed Report

3. Actions and Key Findings/Rationale	4
---	---

Appendices

1. Audit Terms Of Reference
2. Definitions Of Audit Opinions And Recommendations
3. Statement Of Responsibility

1. Introduction

- 1.1 Deprivation of Liberty Safeguards (DoLS) came into force in April 2009 following amendment to the Mental Capacity Act 2005 (MCA) to give protection to people who lack mental capacity to consent to care or treatment. The safeguards apply to people in hospitals and care homes and require that formal application is made to the supervisory body (i.e. the Local Authority), which has to decide within 21 days whether the person can be deprived of their liberty.
- 1.2 Under the DoLS legislation, councils (supervisory bodies) have statutory responsibility for operating and overseeing the MCA DoLS, whilst hospitals and care homes (managing authorities) have responsibility for applying to the relevant supervisory body for a DoLS authorisation. The legislation includes a statutory requirement for all managing authorities and supervisory bodies to keep clear and comprehensive records for every person deprived of their liberty. This includes records of applications for authorisations, details of the assessment process, information about the relevant person's representative and the documentation related to termination of an authorisation.
- 1.3 In March 2014, the Cheshire West judgment was made by the Supreme Court, which clarified the definition of a 'Deprivation of Liberty', known as the 'acid test'. In the wake of this judgment, there was an increase of 123,840 (from 13,700 in 2013/14 to 137,540 in 2014/15) DoLS applications. 62,645 applications were completed by local authorities during 2014/15, almost five times as many as in 2013/14. This further increased to 105,055 in 2015/16.
- 1.4 This audit is being undertaken as part of the agreed Internal Audit Plan for 2017/18.

2. Key Issues

Priority 1 Issues

The statutory requirement to complete MCA DoLS assessments within 21 days was not being met, with the average length of time between application and authorisation on completed assessments being 3 months for 2016/17. **(Issue 2).**

The DoLS Year 8 tracker for 2016/17 cases was not up-to-date, including incomplete or blank data fields. **(Issue 3).**

Priority 2 Recommendations

The MCA DoLS actions in the draft Croydon Safeguarding Adults Board Strategic Plan for April 2017 to March 2020 did not always specify the individual responsible officer, target completion dates or measurable targets. **(Issue 1).**

MCA DoLS subcommittee meetings were not held on a quarterly basis in accordance with its terms of reference, with only one DoLS subcommittee meeting being held between July 2016 and April 2017 **(Issue 4).**

3. Actions and Key Findings/Rationale

<u>Control Area 1: Legislative, Organisational and Management Requirements</u>					
Priority	Management's Action Plan				
2	<p>The DOLS Committee plan has been re-drafted with SMART goals and owners. The Plan will be presented to Full Board of the Croydon Safeguarding Board on July 3rd and once ratified will be available on the CSAB website</p> <p>The ongoing performance will still continue to be reported to the CSAB dashboard which is overseen by the Quality Assurance Committee and is presented to the Leadership Executive Group on a 3 monthly basis.</p>				
	<p>Detailed Finding/Rational – Issue 1</p> <p>Producing S.M.A.R.T (Specific, Measurable, Achievable, Realistic and Time) action plans will ensure that MCA DoLS (and Croydon Adult Safeguarding Board) committee objectives can be monitored and achieved.</p> <p>The examination of the Croydon Safeguarding Adults Board Strategic Plan for April 2017 to March 2020 and objectives 3.1 to 3.10 relating to MCA DoLS identified that:</p> <ul style="list-style-type: none"> • Individual lead officers were not clearly identified in all 10 objectives; • Target completion dates were not defined in eight out of 10 objectives. In two cases where target completion dates were defined, these were past dates (June 2016); and • Measurable targets were not defined. <p>It is understood that the Croydon Safeguarding Adults Board Strategic Plan is still draft and needs to be finalised.</p> <p>Where S.M.A.R.T objectives are not defined, there is a risk that urgent issues may not be identified and required actions implemented in a timely manner, which could result in the failure to achieve objectives.</p>				
	<table border="1"> <thead> <tr> <th>Responsible officer</th> <th>Deadline</th> </tr> </thead> <tbody> <tr> <td>Committee Chair & CSAB Board Manager</td> <td>September 2017</td> </tr> </tbody> </table>	Responsible officer	Deadline	Committee Chair & CSAB Board Manager	September 2017
Responsible officer	Deadline				
Committee Chair & CSAB Board Manager	September 2017				

Control Area 4: Assessment Process	
Priority	Management's Action Plan
1	<p>The action plan to address this is in two parts, namely Short term & Long term.</p> <p>Short term.</p> <ul style="list-style-type: none"> Increasing the capacity of authorised signatories. Training more internal SW's to become qualified BIA's. Making the Internal BIA rota workable with the commitment from the managers. New reporting system (AIS) has replaced the manual tracker for accurate data input and reporting. Increased resources in the assessment area and the admin will reduce the cases that are in breach of the time scales. <p><i>Much of the above is being implemented</i></p> <p>Long term</p> <p>Currently even with the increase in resources for this year, this is still not enough to meet the statutory framework, especially with the continued increase in activity. Therefore the following actions need to happen to understand what is needed to tackle the issues:</p> <ul style="list-style-type: none"> Scoping of resources needed for complete compliance Options to be presented and signed off by Division Management Team with final sign off by Executive Director
	<p>Detailed Finding/Rational – Issue 2</p> <p>The Mental Capacity Act 2005, Deprivation of Liberty Safeguards states that 'When a standard application relates to an urgent authorisation, councils have to complete the assessments within 7 days. If the standard application does not relate to an urgent authorisation, councils have 21 days to complete the assessments'.</p> <p>From the examination of a sample of 10 cases, nine instances were identified where MCA DoLS cases were not processed within statutory timeframes. In these nine instances, completion took between 31-186 days. Three of these cases were high priority cases and the assessment process took 185, 50 and 31 days to complete. Additionally, the examination of assessment tracker (in April 2017) identified 491 cases on the workload at the following stages:</p> <ul style="list-style-type: none"> 'Not yet signed off - Awaiting assessments' 120 cases, last case with received date dating back to 3 January 2016. 'Not yet signed off - Awaiting scrutiny' 118 dating back to 15 April 2016. 'Awaiting sign off' 90 with last case dating back to 4 April 2016. 'Not yet signed off - To be checked/allocated' 163 dating back to 6 October 2016. Discussions with the MCA DoLS Planning officer established that 89 out of the 163 cases had been allocated to Section 12 doctors but not yet BIA. This was; however, not evidenced on the Tracker. <p>The Safeguarding Adults Integrated Scorecard 2016/17 details the following annual figures (each RAG rated as amber) reported to the Croydon Adult Safeguarding Board:</p> <ul style="list-style-type: none"> DoLS applications were received in 2016/17 : 872 DoLS authorised applications in the period: 191 Average length between application and authorisation: 3 months. <p>The score card also details that 'An audit on behalf of Internal Audit has recently been completed out of which an action plan will be developed. There are now more authorisers in place which will help speed up the process.' A summary of the above issues was also raised in a paper to the Adult Social Services Review</p>

	<ul style="list-style-type: none"> Increasing the capacity of BIAs through training and new recruitment strategies including a review of salary scales. Review of the DOLS administration process to identify further efficiencies and scope the extra business support needed to work system 	<p>Panel on 26 April 2017, which also highlighted that the Law Commission had published a draft bill outlining proposed changes to the DoLS process.</p> <p>Where the assessment process is not completed within statutory timeframes, the Council is in breach of the Mental Capacity Act requirements and there is a risk of court challenges. In addition, the individuals concerned may not be receiving the best support for their individual circumstances.</p>
<p>Responsible officer</p>	<p>Deadline</p>	
<p>Head of Safeguarding & QA / MCA – DOLS lead</p>	<p>Short term plan- September 2017</p> <p>Long Term Plan – December 2017</p>	

Control Area 7: Record Keeping		Detailed Finding/Rational – Issue 3				
Priority	Management's Action Plan					
1	<ul style="list-style-type: none"> We are currently operating on a new reporting and recording system called AIS. The Tracker has been replaced with the new system. This will give accurate information regards to the DoLS process. Evidence of effectiveness is the DOLs annual return (first cut was completed) was completed with minimal corrections. We are also in the process of recruiting more DoLS Planning Officers to assist us in the DoLS Process. The ADASS Quality assurance tool that has been used to scrutinise assessments has been reviewed and sent to all the Internal and external assessors' in-order to improve their quality of recording. Clearer pathways between Priority and non-priority cases Increase the capacity of the BIA's in the team. Commissioning more independent Best Interest Assessors to reduce the back log. 	<p>Data Collection guidance for the Deprivation of Liberty Safeguards (DoLS) under the Mental Capacity Act 2005 produced by the Health and Social Care Information Centre states that 'The legislation includes a statutory requirement for all Managing Authorities and Supervisory Bodies to keep clear and comprehensive records for every person deprived of their liberty. This includes records of applications for authorisations, details of the assessment process, information about the relevant person's representative and the documentation related to termination of an authorisation'.</p> <p>Discussions with the MCA DoLS lead established that at the time of audit fieldwork, the DoLS Year 8 tracker for 2016/17 cases was not up-to-date. This was because the Tracker has to be manually updated for each case at every point in the assessment process and it takes a substantial amount of staff time to keep the tracker up to date. While it is acknowledged that an updated tracker was later provided, examination of 249 granted applications on the tracker identified the following gaps:</p> <ul style="list-style-type: none"> 15 cases where the 'date BIA instructed' was not noted; 19 cases where the 'date MHA instructed' was not noted and four cases where 'date MHA report received' was not noted; 102 cases where 'scrutinised by' was not noted and 109 cases where 'date of scrutiny' was not noted; 113 cases 'signed off by' was not noted and 5 cases where 'signoff date' was not noted; 119 cases where 'date letters sent out' was not noted; and 119 cases where 'DoLS to start from' dates were not noted. <p>Additionally, the current tracker does not evidence the way in which cases are prioritised and allocated to BIAs (Best Interest Assessors) and, as such, audit could not verify that cases were appropriately assigned to BIA's based on priority levels (High, Low and Medium) following initial screening.</p> <p>Discussion established that there is an intent to move to AIS to record MCA DoLS applications, but this has been hampered by a lack of reporting functionality, which</p>				
	<table border="1"> <thead> <tr> <th>Responsible officer</th> <th>Deadline</th> </tr> </thead> <tbody> <tr> <td>MCA/DoLS Lead</td> <td>September 2017</td> </tr> </tbody> </table>	Responsible officer	Deadline	MCA/DoLS Lead	September 2017	
Responsible officer	Deadline					
MCA/DoLS Lead	September 2017					

		<p>is being investigated. Minutes provided of the 'DoLS to AIS project' meeting on 16 January 2017 confirmed this.</p> <p>Where appropriate accurate and complete data records are not held, the Council is in breach of the Mental Capacity Act 2005 and there is a risk that MCA DoLS applications may be omitted and not assessed and also that the Service is not able to properly prioritise and plan.</p>
--	--	---

Control Area 8: Management Reporting		Detailed Finding/Rational – Issue 4
Priority	Management's Action Plan	<p>The DoLS committee terms of reference was found to state that 'The subgroup will meet quarterly, and all members will ensure attendance or send a deputy'. Audit identified that only one DoLS subcommittee meeting was held between July 2016 and April 2017. Where regular DoLS subcommittee meetings are not held as defined by the committee's ToR, there is a risk that DoLS issues may not be discussed and resolved in a timely manner.</p>
2	<p>Quarterly Meetings have been booked for the year 2017-2018 with confirmed dates. Members were notified. We have refreshed the Terms of reference and the attendance list. We have also refreshed the membership list to improve the attendance</p>	
Responsible officer	Deadline	
DOLS Committee Chair / CSAB Board Manager	August 2017	

Audit Terms of Reference

Deprivation of Liberty Safeguards

1. INTRODUCTION

- 1.1 Deprivation of Liberty Safeguards (DoLS) came into force in April 2009 following amendment to the Mental Capacity Act 2005 to give protection to people who lack mental capacity to consent to care or treatment. The safeguards apply to people in hospitals and care homes and require that formal application is made to the supervisory body (i.e. the Local Authority), which has to decide within 21 days whether the person can be deprived of their liberty. The supervisory body appoints assessors to assess whether:
- The person is 18 or over;
 - The person is suffering from a mental disorder;
 - The person lacks capacity to decide for themselves about the restrictions which are proposed so they can receive the necessary care and treatment;
 - The restrictions will deprive the person of their liberty;
 - The proposed restrictions are in the person's best interests; and whether
 - The person should rather be detained under the Mental Health Act.
- 1.2 Under the DoLS legislation, councils (supervisory bodies) have statutory responsibility for operating and overseeing the MCA DoLS, whilst hospitals and care homes (managing authorities) have responsibility for applying to the relevant supervisory body for a DoLS authorisation. The legislation includes a statutory requirement for all managing authorities and supervisory bodies to keep clear and comprehensive records for every person deprived of their liberty. This includes records of applications for authorisations, details of the assessment process, information about the relevant person's representative and the documentation related to termination of an authorisation.
- 1.3 In March 2014, the Cheshire West judgment was made by the Supreme Court, which clarified the definition of a 'Deprivation of Liberty', known as the 'acid test'. In the wake of this judgment there was an increase of 123,840 (from 13,700 in 2013/14 to 137,540 in 2014/15) DoLS applications. 62,645 applications were completed by local authorities during 2014/15, almost five times as many as in 2013/14. This further increased to 105,055 in 2015/16.
- 1.4 This audit is being undertaken as part of the agreed Internal Audit Plan for 2017/18.

2.0 OBJECTIVES AND METHOD

- 2.1 The overall audit objective is to provide an objective independent opinion on the adequacy and effectiveness of controls / processes relating to the Deprivation of Liberty Safeguards.
- 2.2 The audit will for each area included in the scope:

- Document and evaluate the risks and controls for each process to consider the key controls;
- Walkthrough the processes to consider the key controls;
- Undertake sufficient testing of controls operating, on a representative sample basis; and
- Reach a conclusion on the effectiveness of the controls operating and report.

3.0 SCOPE





3.1 The audit included the following areas:

Control Areas/Risks	Recommendations Made		
	Priority 1 (High)	Priority 2 (Medium)	Priority 3 (Low)
Organisational, Management and Regulatory Requirements	0	1	0
Applications for Assessment	0	0	0
Appointment of Assessors	0	0	0
Assessment Process	1	0	0
Notification of Outcomes	0	0	0
Challenge and Appeal Procedures	0	0	0
Record Keeping	1	0	0
Management Reporting	0	1	0
Total	2	2	0

DEFINITIONS FOR AUDIT OPINIONS AND RECOMENDATIONS

In order to assist management in using our reports:

We categorise our **audit assurance opinion** according to our overall assessment of the risk management system, effectiveness of the controls in place and the level of compliance with these controls and the action being taken to remedy significant findings or weaknesses.

	Full Assurance	There is a sound system of control designed to achieve the system objectives and the controls are consistently applied.
	Substantial Assurance	While there is basically a sound system of control to achieve the system objectives, there are weaknesses in the design or level of non-compliance which may put this achievement at risk.
	Limited Assurance	There are significant weaknesses in key areas of system controls and/or non-compliance that puts achieving the system objectives at risk.
	No Assurance	Controls are non-existent or weak and/or there are high levels of non-compliance, leaving the system open to the high risk of error or abuse which could result in financial loss and/or reputational damage.

Priorities assigned to recommendations are based on the following criteria:

Priority 1 (High)	Fundamental control weaknesses that require the immediate attention of management to mitigate significant exposure to risk.
Priority 2 (Medium)	Control weakness that represent an exposure to risk and require timely action.
Priority 3 (Low)	Although control weaknesses are considered to be relatively minor and low risk, action to address still provides an opportunity for improvement. May also apply to areas considered to be of best practice.

STATEMENT OF RESPONSIBILITY

We take responsibility to the London Borough of Croydon for this report which is prepared on the basis of the limitations set out below.

The responsibility for designing and maintaining a sound system of internal control and the prevention and detection of fraud and other irregularities rests with management, with internal audit providing a service to management to enable them to achieve this objective. Specifically, we assess the adequacy and effectiveness of the system of internal control arrangements implemented by management and perform sample testing on those controls in the period under review with a view to providing an opinion on the extent to which risks in this area are managed.

We plan our work in order to ensure that we have a reasonable expectation of detecting significant control weaknesses. However, our procedures alone should not be relied upon to identify all strengths and weaknesses in internal controls, nor relied upon to identify any circumstances of fraud or irregularity. Even sound systems of internal control can only provide reasonable and not absolute assurance and may not be proof against collusive fraud. The matters raised in this report are only those which came to our attention during the course of our work and are not necessarily a comprehensive statement of all the weaknesses that exist or all improvements that might be made. Recommendations for improvements should be assessed by you for their full impact before they are implemented. The performance of our work is not and should not be taken as a substitute for management's responsibilities for the application of sound management practices.

This report is confidential and must not be disclosed to any third party or reproduced in whole or in part without our prior written consent. To the fullest extent permitted by law Mazars Public Sector Internal Audit Limited accepts no responsibility and disclaims all liability to any third party who purports to use or rely for any reason whatsoever on the Report, its contents, conclusions, any extract, reinterpretation amendment and/or modification by any third party is entirely at their own risk.

In this document references to Mazars are references to Mazars Public Sector Internal Audit Limited.

Registered office: Tower Bridge House, St Katharine's Way, London E1W 1DD, United Kingdom.
Registered in England and Wales No 4585162.

Mazars Public Sector Internal Audit Limited is a subsidiary of Mazars LLP. Mazars LLP is the UK firm of Mazars, an international advisory and accountancy group. Mazars LLP is registered by the Institute of Chartered Accountants in England and Wales to carry out company audit work.