

**Minutes of the meeting of Adults and wellbeing scrutiny committee held at The Council Chamber - The Shire Hall, St. Peter's Square, Hereford, HR1 2HX on Tuesday 17 July 2018 at 10.00 am**

**Present:** Councillor PA Andrews (Chairman)  
Councillor J Stone (Vice-Chairman)

**Councillors:** PE Crockett, CA Gandy, JA Hyde and D Summers

**In attendance:** Councillors P Rone (Cabinet Member) and AR Round

**Officers:** J Coleman, J Higgins, S Vickers

**Healthwatch:** I Stead

**Together NHS Foundation Trust:** J Melton

**1. APOLOGIES FOR ABSENCE**

Apologies were received from Councillor MJK Cooper.

**2. NAMED SUBSTITUTES (IF ANY)**

There were no substitutes.

**3. DECLARATIONS OF INTEREST**

There were no declarations of interest.

**4. MINUTES**

**RESOLVED:**

**That the minutes of the meeting held on 16 May 2018 be confirmed as a correct record and signed by the chairman.**

The chairman noted that the item on continuing healthcare was not on the agenda due to a request from the Clinical Commissioning Group to ensure their governance process was met. This would now be covered at a specially convened meeting on 20 September 2018.

In response to comments made at a recent meeting of Full council, the Chairman wished it to be emphasised that the service previously based at 1 Ledbury Road was run by Wye Valley NHS Trust and not Herefordshire Council, and it was the decision of Wye Valley NHS Trust to close the setting and not the decision of Herefordshire Council.

## **5. QUESTIONS FROM MEMBERS OF THE PUBLIC**

There were no questions from members of the public.

## **6. QUESTIONS FROM COUNCILLORS**

There were no questions from councillors.

## **7. DEPRIVATION OF LIBERTY SAFEGUARDS**

The specialist services manager presented her report which highlighted the current position with regard to deprivation of liberty safeguards (DOLS).

She explained that the purpose of DOLS was to protect members of the public in hospital or residential or nursing home settings where they lacked capacity to agree to be there. DOLS did not apply to people outside of a registered care home or hospital setting.

By way of background, she made the following points:

- DOLS had been in place since 2008 in response to changes to the Mental Health Act to address a gap in the law, known as the Bournewood gap, where there was no legal process to legally authorise someone's deprivation of liberty as a requirement of the Human Rights Act.
- The initial common assumption had been that DOLS applied where someone objected to the arrangements made on their behalf, but in 2014 major case law redefined DOLS and determined that the objection was not the over-riding or relevant factor but whether or not someone was free to leave; whether the person had continuous supervision; or was under continuous care which infringed or restricted them.
- This meant that more people met the criteria and this had significant implications in Herefordshire where casework increased 15-fold compared with 10-fold nationally. This led to local authorities being unable to meet demand and therefore meet legal responsibilities within required timeframes, resulting in backlogs. In Herefordshire this backlog had reached nearly 600 cases but despite pressures, had now reduced to 290.

The manager described how the arrangements worked locally:

- The backlog was carefully triaged in terms of risks to the individual, using the ADASS prioritisation tool to ensure people at high risk were assessed in a timely manner.
- The triage system looked at a range of factors as they affected the individual, including the level of restrictions, the family's and power of attorney's views and safeguarding issues, to reduce impact of restrictions.
- The process was intensive and involved 6 assessments, which covered age, mental capacity, whether there was anyone who was granted powers such as lasting power of attorney, who it was that was objecting, doctor's eligibility

assessment, doctor's mental health assessment, and best interest assessment to determine that criteria was met and that it was in the person's interest and proportionate to the risk of harm.

- The process was complex, and required a senior officer for final authorisation. The authorisation could last up to 12 months, after which, if the person were in the same setting, it would be necessary to repeat the process. Although a streamlined process was in place to make it quicker, it still took time to evidence the 6 assessments.
- The requirements meant that the process took time and effort for the 13000 referrals, with a backlog of 290, although compared with other authorities, this was good service performance.

The director for adults and wellbeing commented that some councils had invested funding to clear their backlogs but the funding had to be sustained to keep up with demand. Practitioners across the country had led the development of new processes and forms to make it as streamlined as possible but anyone under DOLS authorisation had to have their case reviewed, making the processes necessarily repetitive, and it was often the case that people could be on DOLS authorisation for several years, so the numbers continued to grow.

A member welcomed the clarity of the presentation and commented on the need to get the approach to DOLS right and manage the many steps required. However for some people, following their first DOLS authorisation lasting 12 months, would need this repeating in some cases over many years, therefore calling for more streamlining of the process. From a national point of view, this needed addressing as adult social care budgets were under more pressure than ever, and the demand for DOLS was set to increase.

The service manager explained that the government was looking at the process and had concluded that a different approach was needed, and that a white paper was produced last March to create liberty protection safeguards and to look at where time may be extended after initial authorisation. However, this remained in process and was not expected to become law until 2020. She added that the costs for each assessment were significant, and the council was spending £350 per assessment and £175 on a doctor's report, although the fees for best interest assessors had been reduced to £250 and the doctor's assessment was reduced where the doctor was carrying out more than one assessment in the same setting. The cost of the DOLS scrutiny and administration of the process also had to be factored in as well as the cost of the authoriser's time at senior level.

The director added that there had been a judicial review and £34m had been allocated, although the impact was in the region of £450m to £600m for local authorities.

In answer to a question from the chairman regarding the appeals process, it was explained that there was a separate element through the Court of Protection if someone indicated they were objecting, and the arrangements would then be considered by a judge. This was a High Court process which had significant cost implications for instructing barristers.

The process also required the input of a relevant person's representative to advocate for the person and although family members were sought there were many occasions where there was no family member to do this and so it was necessary to appoint someone through a contracted advocacy service.

Over all, this was a costly process, which also required DOLS authorisations to be reviewed whenever there was a change of circumstances and to ensure that the prioritisation within the backlog of casework was appropriate.

The deputy solicitor to the council outlined that in terms of introducing the anticipated changes to legislation, this would take time to go through the parliamentary process, and be subject to further amendments, so changes were not likely until 2020.

In answer to a question from the chairman regarding the high number of referrals, the service manager explained the context of there being 24% of the older age population with dementia.

There was a significant number of referrals owing to this including hospital admissions which fall to the local authority to respond to, although Wye Valley NHS Trust tried to ensure appropriate referrals and there was case law to make this clearer. She added that on average per week there were between 25 and 30 referrals and around 30% were hospital referrals.

A member asked about the efficacy of the screening tool and whether this would be reviewed. The service manager confirmed that families were generally content with system, although any feedback from families tended to be in relation to the DOLS initiation and the onerous process.

The vice chairman asked about the current budget, which was £150k less than last year, and whether there were any implications with regard to adult social care funding pressure.

The director confirmed that the DOLS budget was overspent last year by £150k. This year the budget was set at same rate and the service was asked to avoid overspending. To do this, efficiencies would be achieved by negotiating with assessors to reduce fees and achieve economies of scale. It was noted that demand was likely to increase and that authorisations would need to be repeated, so it was a key aspect of managing the situation was to prioritise in terms of risk using the ADASS prioritisation sheet.

In answer to a member's question around the role and involvement of power of attorney the service manager clarified that for lasting power of attorney for health and welfare, the person would be involved in the process and their views taken into account. They would have the final say on the DOLS and would have to be assured that the arrangements were appropriate. The director added that the lasting power of attorney did not have authority to deprive someone of their liberty so there had to be statutory process.

The service manager clarified a point for a member about annual assessments by outlining the recording and flagging system which enabled individual cases to be tracked. Since March 2018, this tracking was being managed through the Mosaic information management system.

A member noted that the required process was being followed and that there was confidence that officers were reviewing the backlog of cases. However, the process was appalling and a letter should be sent to the government to say that it was not fit for purpose and calling for urgent review, especially at a time when councils were under such pressure.

The director explained that there was already a paper before parliament, but suggested that the committee could address both the local MPs about the delays in new legislation and ask them to speed the process up. ADASS were leading the way and had already highlighted the risks and asked the government to look at long term funding solutions for adult social care. Discussion took place around the merits of this and whether ADASS carried more weight in seeking this outcome, and it was clarified that Herefordshire had already responded to the white paper consultation along with many other local authorities.

**RESOLVED**  
**That**

- a) **the current position for DOLS be noted;**
- b) **that the current process in place locally for DOLS be accepted; and**
- c) **the executive be asked to write to the Department of Health and the two local Members of Parliament asking for improvements to the legislation to be expedited.**

## **8. COMMITTEE WORK PROGRAMME 2018-19**

Members considered the draft work programme for the current municipal year.

The following points were noted:

- It would be a challenge to cover business in the time before the purdah period commenced ahead of the council election in May 2019.
- A report on the issue of continuing healthcare was planned for the meeting on 20 September, once it had passed through the governance process for the Clinical Commissioning Group.
- An item covering the draft domestic abuse strategy be considered on 20 September following a member's workshop this afternoon.
- Consideration of the annual budget was identified for the meeting on 2 October, subject to meeting the timeline for governance of this item. It was noted that the process for budget recommendations would be for the adults and children's scrutiny committees to pass their comments to the general scrutiny committee for collective submission.
- A report on public health activity was timely, for the new director of public health to present her proposals for delivery and to show how they fit with national programmes. The report would need to show how initiatives would have impact, and it was agreed that Healthwatch be invited to contribute to this item. It was noted that there was a children's scrutiny spotlight review on children's dental health and childhood obesity which incorporated good work by Healthwatch with the public, and that there was a link to adult dental health and obesity as a family wide issue. This item was identified for the 2 October meeting and would include public health improvement plans that had been set by the directorate. It was agreed to share these plans for the committee to identify specific focus areas, although an ensuing discussion suggested the inclusion of flu vaccination promotion for the health and care workforce.
- It was suggested to consider the matter of the Clinical Commissioning Group and Wye Valley NHS Trust's plans for responding to housing growth in the county and the corresponding demand for services. It was noted that the effects across the Sustainability and Transformation Partnership footprint would need to be included in this. Timing for this item would be the 29 January 2019 meeting.
- An update on Home First be included on 19 March 2019, which would include input from Healthwatch on their work in this area.
- A service review on Addaction to be included on the agenda for 19 March 2019.
- An update on WISH was suggested, which could be covered by way of a briefing note.

### **RESOLVED**

**That**

- a) **subject to the additions and amendments discussed, the draft work programme for 2018-19 be agreed; and**
- b) **where recommendations have been made to the executive, these be collated on an action tracking document for review and follow-up.**

The meeting ended at 11.37 am

**Chairman**