Herefordshire Council

Agenda

Adults and wellbeing scrutiny committee

Date:	**Tuesday 17 July 2018**
Time:	**10.00 am**
Place:	**The Council Chamber - The Shire Hall, St. Peter's Square, Hereford, HR1 2HX**
Notes:	Please note the time, date and venue of the meeting.

For any further information please contact:

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Agenda for the meeting of the Adults and wellbeing scrutiny committee

Membership

Chairman	**Councillor PA Andrews**
Vice-Chairman	**Councillor J Stone**
	Councillor MJK Cooper
	Councillor PE Crockett
	Councillor CA Gandy
	Councillor JA Hyde
	Councillor D Summers

Agenda

Pages

1. APOLOGIES FOR ABSENCE

To receive apologies for absence.

2. NAMED SUBSTITUTES (IF ANY)

To receive details any details of members nominated to attend the meeting in place of a member of the committee.

3. DECLARATIONS OF INTEREST

To receive any declarations of interest by members in respect of items on the agenda.

4. MINUTES 7 - 12

To approve and sign the minutes of the meeting held on 16 May 2018.

5. QUESTIONS FROM MEMBERS OF THE PUBLIC

To receive questions from members of the public.

Deadline for receipt of questions is 5pm on 11 July 2018.
Accepted questions will be published as a supplement prior the meeting.

For guidance on how to submit a question to the committee, please see: https://www.herefordshire.gov.uk/getinvolved

Please submit questions to: councillorservices@herefordshire.gov.uk

6. QUESTIONS FROM COUNCILLORS

To receive questions from councillors.

Deadline for receipt of questions is 5pm on 11 July 2018.
Accepted questions will be published as a supplement prior the meeting.

Please submit questions to: councillorservices@herefordshire.gov.uk

7. DEPRIVATION OF LIBERTY SAFEGUARDS 13 - 46

To provide the committee with information about:

- the current approach taken by the council in relation to Deprivation of Liberty Safeguards (DoLS) and how they are delivered
- the approach taken by the council to manage risks in relation to the Deprivation of Liberty Safeguards

in order that the committee may determine any recommendations it wishes to make to the executive with a view to further mitigating risks and securing improvement.

8. COMMITTEE WORK PROGRAMME 2018-19 47 - 58

To consider the committee's work programme for the 2018-19 municipal year.

The public's rights to information and attendance at meetings

You have a right to: -

- Attend all council, cabinet, committee and sub-committee meetings unless the business to be transacted would disclose 'confidential' or 'exempt' information.
- Inspect agenda and public reports at least five clear days before the date of the meeting.
- Inspect minutes of the council and all committees and sub-committees and written statements of decisions taken by the cabinet or individual cabinet members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
- Access to a public register stating the names, addresses and wards of all councillors with details of the membership of cabinet and of all committees and sub-committees.
- Have a reasonable number of copies of agenda and reports (relating to items to be considered in public) made available to the public attending meetings of the council, cabinet, committees and sub-committees.
- Have access to a list specifying those powers on which the council have delegated decision making to their officers identifying the officers concerned by title.
- Copy any of the documents mentioned above to which you have a right of access, subject to a reasonable charge (20p per sheet subject to a maximum of £5.00 per agenda plus a nominal fee of £1.50 for postage).
- Access to this summary of your rights as members of the public to attend meetings of the council, cabinet, committees and sub-committees and to inspect and copy documents.

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Please note that the Shire Hall in Hereford, where the meeting is usually held, is also where Hereford Crown Court is located. For security reasons all people entering the Shire Hall when the court is in operation will be subject to a search by court staff. Please allow time for this in planning your attendance at a meeting.

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Members of the public are advised that if you do not wish to be filmed or photographed you should let the governance services team know before the meeting starts so that anyone who intends filming or photographing the meeting can be made aware.

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Please do not allow any items of clothing, etc. to obstruct any of the exits.

Do not delay your vacation of the building by stopping or returning to collect coats or other personal belongings.

The chairman or an attendee at the meeting must take the signing in sheet so it can be checked when everyone is at the assembly point.

Herefordshire Council

Minutes of the meeting of Adults and wellbeing scrutiny committee held at Committee Room 1 - The Shire Hall, St. Peter's Square, Hereford, HR1 2HX on Wednesday 16 May 2018 at 2.00 pm

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

Councillors: MJK Cooper, PE Crockett, CA Gandy, AW Johnson and D Summers

In attendance: **Councillor P Rone (Cabinet Member)**
Herefordshire Council officers: J Coleman, R Vickers, S Vickers
Wye Valley NHS Trust officer: D Farnsworth
Healthwatch Herefordshire: I Stead

1. APOLOGIES FOR ABSENCE

Apologies were received from Councillor SD Williams.

2. NAMED SUBSTITUTES (IF ANY)

Councillor AW Johnson attended as a substitute for Councillor SD Williams.

3. DECLARATIONS OF INTEREST

There were no declarations of interest.

4. MINUTES

RESOLVED:

That the minutes of the meeting held on 27 March 2018 be confirmed as a correct record and signed by the chairman.

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. ADULT SOCIAL CARE LOCAL ACCOUNT 2017 - DRAFT

The Interim director for adults and wellbeing introduced the draft local account, which, although it was no longer a requirement to produce, was believed to be best practice to do so. In his accompanying presentation the director also provided an update on the adult social care pathway, and made the following points:

- The local account was a draft for consideration, plus a broader set of performance information focusing on the past year from January 2017
- Phase 2 of the adult social care pathway project had now closed; the development of the pathway involved providers and the voluntary sector to look at the call handling and responses to calls to the front door at the assessment and referral team (ART).
- A new strengths-based route explored why someone has contacted the front door and explored what outcomes they were looking for, identified the risks and supported someone to be as independent as possible. 60% of callers were offered information, advice and signposting, with the remaining callers being offered additional support.
- The pathway involved a community broker function; the council tax precept had been used to develop community connectors in order to map community resources across the county and identify trusted providers through the third sector, which led to the introduction of the community broker function as a team of seven, 2 of which were funded through a grant from the MOD for supporting service personnel. The brokers were organised so that there was always one at the front door to provide information for the call handlers so that the offer was of high quality and took into account someone's wider wellbeing.
- The new arrangements made it possible for callers to be responded to quickly and ensure that they knew when their appointments were and who their practitioner was. Support was now allocated immediately and this was felt to be a great achievement.
- The community brokers were soft market testing the roll-out of Talk Community across the market towns and the city where they would be available for drop-in contact.
- The pathway works with a strengths based approach to look at what people can achieve and do for themselves, what risks were attached, and what the neighbourhood and community could do. Community brokers were experts in the communities, being at the front door and throughout the discharge process.
- In terms of delayed transfers of care, there were known pressures in the system and most delays were not as a result of waiting for assessment. There was more robust monitoring of performance data and making changes to the flow of transfers to increase speed of transfer.
- Reablement and rapid response services were being brought together into the home first social care offer. Adult social care and Wye Valley NHS Trust were working together to continue to integrate health and social care but it was important to make the distinction between the different pathways for clinical health input and the council home first service.
- Planning for the home first programme started last summer before the closure of Hillside was known.
- The Associate director of transformation, Wye Valley NHS Trust (WVT) added that the bed based service continued where someone has a clear reablement or palliative care need. It was recognised that there were up to 45% people who were medically fit for discharge referred through services who were waiting for services. It had been long recognised that people were not best served by waiting in a bed when they could be supported in the community by district nurses and hospital at home functions. Home First sought to maximise and bring these services together with increased community capacity including physiotherapists and nursing support to move patients into the community and to

provide opportunity to move away from reliance on bed based care, but it was important to continue investment. There were further plans to integrate and develop complex discharge teams and maximise the offer.

Members asked a number of questions in relation to the points raised.
A member commented that people wouldn't know what to expect as they would not know about Home First, and that this was causing some anxiety. He asked whether service users were getting a hard copy of what they need to know about their care before going home, the director confirmed that there was an information leaflet for people who took that pathway and that work was happening to ensure the system flow was right. The associate director, WVT, added that the objective was to streamline the information that went to patients and could include more information in a health update to committee later in the year.

The member asked about the extent of involvement of loneliness charities in the development of Home First, and commented on the vital support that such groups provided such as by collecting prescriptions. The Director explained that there was a preventive approach where commissioners were working with such groups within communities to learn from and support.
The Cabinet member for health and wellbeing explained that such groups were established by a driving force and that they were good at what they did and were skilled in asking for help if they needed it, and as such they were concentrated on specific areas and roles so it was important to support them if requested without interfering in their work. A member concurred with this and commented on the success of a good neighbour scheme in her area that was working well. Members commented further that it was important to raise awareness of their existence, and a solution could be to contact the groups to commend their work and to let them know that support was available.

A member asked for clarification regarding the performance chart provided in the presentation and asked what was meant by disputes. The director clarified that this was about where the responsibility lay for a delay in the transfer of care. The associate director, WVT, added that there were regular reviews but these focused on identifying who was responsible at the end of the process so as not to impact on the patient. The member commented that the data suggested that there had been a deterioration in the council's performance although it had been indicated that performance was good and there were no hold-ups in service provision. It was also noted that the figures included winter months where there would be a natural rise in demand, however this was prolonged because of the cold spring and so pressures would continue. The Chair asked whether this was due to operating a 5-day service, to which the response was that it was a challenge to work across 7 days due to the complexity of the processes and ensuring that everything was readily available at the weekend.

The chair asked about what had been done to address performance in Powys which had affected transfer of care. The associate director, WVT explained that the social care offer in Powys was limited because of workforce issues, but this was mitigated by the Powys Local Health Board to enable transfer to a bed based system to relieve discharges in Herefordshire and there was ongoing dialogue with Powys.

Discussion took place regarding the public's perception of Home First that it was not an adequate replacement for Hillside and members commented on the need to ensure the public had more information on the pathways to raise awareness. The role of Healthwatch in this was noted.
A member asked about changes to the contracting, in particular in relation to Kemble Care and whether this had impact on the development of Home First. The Director explained that any depletion of resource would have impact but the services was working with other providers to ensure the market was strong. The service was being developed and a review had been brought forward to provide assurance and facilitate

transformational work. He added that a safe service was provided although there were issues regarding efficiency and coming to terms with new ways of working such as reablement.

In response for a question from the chair regarding consistency in service such as familiar faces providing care, officers explained that the aim had been to bring services together to build a critical mass and be more consistent and efficient. The review was comprehensive and the challenges related to bringing components and workforces together to maximise the potential to bring people home. Critical changes around working practices were identified and it was necessary to address this and to build additional capacity to provide a 7-day service, which would be supported by a newly procured e-rostering system. Home First complemented other services, offering 3 tiers depending on need. There was a development plan with milestones and escalating attention to any slippage, and ensuring that the system was utilising capacity and capability.

Responding to a question from the vice-chairman regarding feedback from service users, officers reported that it was felt that people received a reasonably good service, and the challenge was that they may be over-supported rather than enable progression through the service, which in turn restricted the number who could enter the system. The distinction was made between a reablement service promoting independence compared with a traditional occupational therapy service looking at medium to long term goals.

In terms of numbers of service users a member asked about residential care numbers, noting that the average cost of service provision amounted to £650 per week per person. The Director commented that where possible it was in people's interest to be supported at home and that for residential care, people would be in receipt of low level medical care rather than round the clock nursing care so people would be encouraged to make the right choices about whether this care would be better provided at home, subject to quality assurance.
He added that there were around 800 self-funders, for whom in some instances the cost of care was taken over by the council, and this could determine where someone lived.
Discussion took place regarding alternatives including social housing and whether there was sufficient supply of warden-controlled accommodation. The Cabinet member reported that the possibility of social housing providers offering day visitor arrangements was being explored.
A member noted that the proportion of self-funders was high which meant that care home providers were less dependent on the local authority for income.
In response to these points, the Director highlighted the need for more strategic planning on accommodation for vulnerable people to support better management of the market.

A member made a general comment on the figures in the report which were expressed as percentages rather than actual numbers, such as the 20% increase in the use of WISH, which was not felt to be informative. The Director noted this and offered to provide numbers to allow performance to be better understood.

RESOLVED
That

a) **the performance of adult social care services be noted; and**
b) **the Cabinet member for health and wellbeing investigate the potential of using the council's development partner, Keepmoat, to develop more supported accommodation for those who need it.**

8. HEALTHWATCH HEREFORDSHIRE ANNUAL REPORT 2017-18

The Chair of Healthwatch Herefordshire presented the annual report for 2017-18. In his opening remarks he thanked those members who attended the Healthwatch annual showcase event held that morning. It had been a big year for Healthwatch Herefordshire as a standalone company. This was a big achievement, where a lot had been learned from the relationship with Healthwatch Worcestershire, which continues with collaborative work. The day to day operation of the organisation continued thanks to the appointment of the chief officer, and it was a vote of confidence to have the contract to provide the Healthwatch service extended to 2020.

In summarising the annual report and the work of Healthwatch during 2017-18, he described work undertaken on major projects to properly influence change within the county, which included:

- GP access – 313 people spoken to about access to GP services. Two thirds were happy with their services, and the findings were being used to make improvements, such as increasing understanding of what different GPs offer and managing reasonable adjustments. A number of recommendations were made and used for a number of projects to realign primary care services around the market towns. The work also informed a quality review of end of life by the Clinical Commissioning Group.
- Public health and children's mental health – there are plans to work with the new director of public health on further work.
- Children's dental health – there was in-depth work on this, involving 537 people, with lots of information gathered, concluding that people needed to know more about what is on offer for dental health.
- Walk-in centre – work would continue to monitor the impact of the closure of the walk-in centre to see what alternative provision people presented at instead.
- Hillside - there had been useful meetings with WVT and adult social care around the development of community health and social services. There were improvements but more needed to be done. The key was how the different parts were co-ordinated and moving people away from having too many carers.
- Complex and multiple conditions – work was nearing completion around the co-ordination of all the components of care where people have dual diagnoses. Healthwatch was engaging with special interest groups to find out more about the issues faced.
- There had been a lot of contact with people to give information and advice and Healthwatch had moved to visiting existing groups rather than holding general events. Healthwatch had visited 101 groups which had increased engagement and allowed for richer information to be gathered.
- There was contact with patient participation groups where Healthwatch involvement had positive impact. A good example of engagement with Ledbury health interest group over concerns about the impact of significant housing development led to the issue being raised with the Clinical Commissioning Group. There was also engagement in Kington and Leominster looking at providing more comprehensive services, and there would be an open public meeting to look at proposals for Leominster.
- The mental health working group was reinstated, with regular meetings with users, inviting speakers and influencing how services would be delivered.

Work planned for the coming year included care in community, dementia care and children and young people's mental health.

Healthwatch had also recently launched an online feedback centre where people could submit reviews of services which, subject to moderation, would be displayed and would be fed back to the provider.

The chair commented that the public would have to accept that services needed to change, given changes in the available workforce and recruitment issues, which would affect how they accessed a GP. The Healthwatch chair responded that there were workforce shortages in the county but Herefordshire was doing comparatively well. Practices needed to rethink how they delivered services and accept that someone with a long term condition should be seen by the same GP.

Members thanked Healthwatch for its accomplishments, noting that the organisation seemed more dynamic and that the policy of going out to people was an improvement.

The Interim director for adults and wellbeing added that the new arrangement was welcomed and that Healthwatch maintained a healthy professional relationship whilst holding the council to account, and this would be supported.
In response to a question from a member, the Healthwatch chair confirmed that the council was listening to Healthwatch feedback on service delivery.

A member added thanks for the report and commented on the extent to which a GP could save time overall by taking a bit more time with patients in consultations to provide reassurance, but some needed to be convinced of this. The Healthwatch chair replied that GPs were under pressure but some were willing to take on ideas, although when under pressure, rather than look to the service user for ideas, they looked for their own solutions such as restricted opening times.

RESOLVED
That Healthwatch Herefordshire performance for 2017-18 be noted.

The meeting ended at 4.33 pm **Chairman**

Herefordshire Council

Meeting:	**Adults and wellbeing scrutiny committee**
Meeting date:	**Tuesday 17 July 2018**
Title of report:	**Deprivation of Liberty Safeguards**
Report by:	**Director for adults and wellbeing**

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose and summary

The purpose of this report is to provide the committee with information about:

- the current approach taken by the council in relation to Deprivation of Liberty Safeguards (DoLS) and how they are delivered
- the approach taken by the council to manage risks in relation to the Deprivation of Liberty Safeguards

in order that the committee may determine any recommendations it wishes to make to the executive with a view to further mitigating risks and securing improvement.

Recommendation(s)

That the committee determine any recommendations it wishes to make to the executive to consider which may deliver further improvement and risk mitigation.

Alternative options

1. There are no alternative options to the recommendation; it is a function of the committee to make reports or recommendations to the executive with respect to the discharge of any functions which are the responsibility of the executive.

Further information on the subject of this report is available from
Jane Higgins, , email: Jane.Higgins@herefordshire.gov.uk

Key considerations

Background

1. The Deprivation of Liberty Safeguards (DoLS) came into being in the 2007 Mental Health Act as an amendment to the Mental Capacity Act 2005 and were implemented in 2008. The purpose of DoLS was to create a legal framework whereby the UK could comply with Article 5 of the European Convention on Human rights. The European Convention on Human rights is enshrined in UK law through the Human rights Act. Article 5 includes the following:-

   1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law

   (e)The lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants.

2. The purpose of DoLS is to provide a procedure prescribed by law, which allows hospitals, registered care homes and registered nursing homes to accommodate people and impose restrictions that amount to a deprivation of liberty, but are in the best interests of the individuals being restricted. This only applies to people who lack capacity to agree to these restrictions. If a person has capacity to agree to any restrictions and they are in agreement with the restrictions they are not deprived of their liberty.

3. In March 2014 following a ruling by the Supreme Court in the cases of *P v Cheshire West & Chester Council & another; (2) P & Q v Surrey County Council* the scope of DoLS was greatly widened, with increasing numbers of people in residential care/nursing homes and hospitals now falling within the criteria for DoLS.

4. As a consequence the number of referrals for DoLS nationally increased tenfold in the following 12 months. This high level of referrals has continued and as a consequence councils throughout England have struggled to meet demand. Most councils now find themselves in a position where they have a backlog of cases which have not yet been assessed.

5. In the case of Herefordshire the number of referrals has risen nearly fifteen fold in the years following the Cheshire West ruling; this is significantly above the increase experienced in other areas. The higher level of referrals in Herefordshire is due largely to the fact that Herefordshire has a higher percentage of people over the age of 65 (24% of the population) than other counties within England; this impacts on the number of people who are suffering from Dementia Illnesses and consequently the number of people in care homes and hospitals within the county who lack capacity to make decisions about where they live. As a consequence of the high levels of demand Herefordshire Council is maintaining a backlog. The council has worked hard to reduce that backlog and since its peak in 2016 has managed to halve the backlog of cases awaiting assessment; this is in spite of receiving 1300 new referrals in the year 2017-18. As at the end of May 2018 336 referrals were awaiting assessment.

Response to the increase in demand

6. At the time of the Cheshire West case there was no dedicated DoLS team or DoLS lead within Herefordshire Council. In the months and years following the Cheshire West ruling the council has responded by substantially increasing resources for DoLS including appointing a DoLS lead and creating a DoLS team. In the year prior to the Cheshire West ruling (2013/14) the money invested in DoLS by the Council was £46,956. The investment in the DoLS service increased year on year up until last year when the amount spent was £678,490.

7. In terms of response from central government each council was given an additional sum of money in 2015/16 to assist them in coping with the increase in numbers of DoLS referrals. In the case of Herefordshire the amount we received was £93,932. Whilst any additional funds are helpful this one off payment was insufficient to help Herefordshire address the massive increase in DoLS referrals that it experienced, especially given that it was a one off payment. It is estimated that it would cost approximately £1 million a year for the council to assess all of the referrals that it receives on an annual basis based on current referral rates.

The DoLS process

8. The DoLS process is very complex and includes a statutory requirement that six assessments are completed. The completion of these assessments has to be done by a specially qualified Best Interest Assessor and a specially qualified doctor. Both these professionals need to write reports following their assessments. These reports then have to be scrutinised by the DoLS team before being sent to a senior manager for final scrutiny and sign off. (See appendices 2,3,and 4 for details of the forms used and appendix 5 for a flow chart detailing the DoLS process)

9. In addition to the above process it may be necessary to undertake a review of a case that is currently authorised under DoLS if the person's circumstances change or at their request or the request of their relevant persons' representative.

10. Herefordshire Council is also involved in DoLS cases where the person who is deprived of their liberty or their representative has appealed against being deprived of their liberty by making an application to the Court of Protection. To date, since 2014, 26 Herefordshire cases have gone to the Court of Protection under appeal and in all of these cases the council's decision to deprive the person of their liberty has been deemed to be in the person's best interest and the DoLS has been upheld.

11. In response to the backlog of cases that the council currently holds we are using a prioritisation tool that has been developed and approved by the Association of Directors of Adult Social Services in order to ensure that higher risk cases are prioritised for assessment (see appendix 1)

Future plans in relation to Deprivation of Liberty Safeguards

12. In March 2014 a House of Lords Scrutiny Committee produced a report into the implementation of Mental Capacity Act 2005. Within the report it expressed a very clear view that the Deprivation of Liberty Safeguards were not fit for purpose and that they required reviewing with a view to their being replaced. The ruling by the Supreme Court in the same month as outlined above and the resulting demands that this has put on the process, further demonstrates that the Deprivation of Liberty Safeguards are not fit for purpose.

13. As a result of the above concerns about the current process the Law Commission was tasked with reviewing the DoLS process and developing a possible replacement. Following a process of development and consultation the Law Commission published a draft bill on 13 March 2017 proposing a new process called “Liberty Protection Safeguards”. The Government’s final response was published on 14 March 2018 in which it agreed the current DoLS system should be replaced as a matter of pressing urgency and broadly agreed with the Liberty Protection Safeguards model. The legislation will be brought forward when parliamentary time allows, however no timetable has yet been publicised.

Community impact

14. The DoLS process contributes to the council’s Corporate Plan in relation to the priority “Enabling residents to live safe, healthy and independent lives”. The DoLS process helps to ensure that citizens of Herefordshire who are residing in hospitals and residential care settings, but lack the mental capacity to agree to these arrangements, are receiving the care and treatment that they need in their best interests. The DoLS process aims to ensure that citizens are kept safe and healthy, but in a way that upholds their human rights by keeping restrictions to a minimum.

15. The DoLS team supports partners within the NHS and providers of care in ensuring they apply the principles of the Mental Capacity Act and uphold the Human Rights of those that they care for.

Equality duty

16. The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to any of the nine ‘protected characteristics’ (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). The DoLS process does not discriminate against any citizens with any of the protected characteristics. The citizens who are subject to the DoLS process and are subject to an authorisation under DoLS are all suffering from a mental disorder within the meaning of the Mental Health Act 2007 and therefore clearly fall into the protected category of disability in addition to any other protected characteristic they may have. The DoLS process is designed to uphold the human rights of these individuals who may struggle to advocate for themselves in relation to the care and treatment they receive. The DoLS process requires Best Interest Assessors in undertaking best interest assessments to work within the Mental Capacity Act 2005. Chapter 4 of the Act in regard to best interest decisions states the following:-

> *In determining for the purposes of this Act what is in a person's best interests, the person making the determination must not make it merely on the basis of—*
>
> *(a) the person's age or appearance, or*
>
> *(b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about what might be in his best interests.*

17. In following the Mental Capacity Act 2005 and the Mental Capacity Act and DoLS code of practice the DoLS assessors are aware of their duties under the Equality Act when making recommendations regarding restrictions imposed on the individuals they are assessing.

Resource implications

18. The budget for the DoLS service for 2018/19 is £650,417, which also covers the cost of running the Daytime Approved Mental Health Professional (AMHP) service, and the out of hours emergency duty service. The spend on the DoLS Service for 2017/18 (excluding the cost of the AMHP and Out of Hours service) was £678,490. £549,000 of expenditure was provided through the better care fund. The current budget for the DoLS and AMHP service is £150,000 less than the previous year. Efficiencies have been achieved by reducing the fees paid to Independent Best Interest assessors to bring payments in line with the national average. It is expected that due to the efficiencies identified that performance levels will not be adversely affected.

Legal implications

19. Functions of the scrutiny committee are set out in paragraph 3.4.2 (a-h) of the council constitution.

20. Following the landmark case of HL v UK in 2004 (referred to as the 'Bournewood judgement', the Mental Capacity Act 2005 was amended so that where a person is in a care home or hospital setting, a deprivation of liberty may also be authorised under the deprivation of liberty safeguards (DoLS) framework.

21. Urgent authorisations may be granted by a care home or hospital (a 'managing authority') for up to 7 days and may be extended for up to a further 7 days by a supervisory body on request

22. Standard authorisations may be granted by the supervisory body (in all cases the local authority) for up to one year, after which a further application will be required. A standard authorisation must be requested by the managing authority where it appears that a person is, or will within 28 days, be accommodated in a care home or hospital in circumstances amounting to deprivation of liberty. The duty of the council as supervisory body is to undertake an assessment of whether the person meets the six qualifying requirements as identified in paragraph 11 of the report.

23. If the requirements are met, the council must grant a standard authorisation and the council is permitted to attach conditions to a standard authorisation, having regard to any recommendations made by the Best Interests Assessor.

24. A House of Lords Scrutiny committee report in 2014 concerning DoLS found them to be "poorly drafted, overly complex, not well understood and poorly implemented." The Law Commission were requested by the Government to provide proposals for a 'new legislative framework'.

25. The Commission proposes a new scheme of 'Liberty Protection Safeguards' to replace DoLS. Liberty Protection Safeguards would cover deprivations of liberty in all settings. Responsibility for authorising deprivation of liberty would rest with the local authority or the NHS body for deprivations of liberty in hospital or relating to NHS CC patients.

26. The timescale for enactment of new legislation is unclear.

Risk management

27.

Risk / opportunity	Mitigation
<u>Cases that have been assessed and authorised under the DoLS process.</u> 1) There is a risk that any cases that are authorised by the council under the DoLS process may be taken to the Court of Protection by the Individual or their representative as an appeal against the DoLS under section 21A of the Mental Capacity Act. As a result of such an appeal the court may decide that the deprivation of liberty is unlawful if the DoLS process has not been followed appropriately and the council may face financial penalties and loss of reputation.	<u>Cases that have been assessed and authorised under the DoLS process.</u> 1) All cases that are assessed under the DoLS process, where an authorisation is recommended by the assessor, are scrutinised twice, once by the DoLS team manager or a very experienced Best Interest Assessor and then a second time by senior manager within Adult Social Care prior to them agreeing to authorise a deprivation of Liberty. In addition all independent assessors have examples of their work scrutinised by the DoLS team manager prior to them being commissioned to undertake any DoLS work for the Council. To date none of the Herefordshire DoLS cases that have gone to section 21A appeals have resulted in a ruling that Herefordshire Council has illegally deprived someone of their liberty.
<u>Risk for cases awaiting assessment under the DoLS process</u> 2) Whilst the council continues to hold a backlog of cases that have not been assessed under the DoLS process there is a risk that in some of these cases the citizens involved may be illegally deprived of their liberty. Anyone who is illegally deprive of their liberty may be experiencing restrictions on their freedom of movement which are not in their best interests and therefore may be at risk of harm. 3) In addition to this there is a risk that the council is failing to meet its statutory duties under the DoLS process due to not assessing cases within the statutory timeframes. This could result in litigation by individuals or their representatives if they are being deprived of their liberty without a legal	2) All of the referrals that are received by the DoLS team are triaged using the ADASS prioritisation tool at appendix 1, this ensures that those most at risk of harm by being deprived of their liberty are assessed in a timely manner. As a result of this the risks of harm to citizens due to an inappropriate deprivation of liberty are reduced. Cases that are placed in the backlog are also periodically re-triaged to ensure any changes in circumstances are picked up 3) Whilst there remains a risk of litigation with cases that have not been assessed the courts have to date taken a pragmatic view where it is clear that local authorities have taken all the steps they can to assess cases as soon as they can within their resources and

	framework being in place whilst they are awaiting a DoLS assessment. This could result in the council facing financial penalties and loss of reputation.	where breaches of the law are procedural. Financial penalties in these cases have been relatively low.

Consultees

None

Appendices

Appendix 1: ADASS prioritisation tool

Appendix 2: DoLS form 3

Appendix 3: DoLS form 4

Appendix 4: DoLS form 5

Appendix 5: DoLS Process Flow Chart

Background papers

None identified

ADASS TASK FORCE

A Screening tool to prioritise the allocation of requests to authorise a deprivation of liberty

Due to the vast increase in demand for assessments under the Deprivation of liberty safeguards the ADASS task force members have shared practice in relation to prioritisation and produced this screening tool. The aim of the tool is to assist Councils to respond in a timely manner to those requests which have the highest priority. The tool sets out the criteria most commonly applied which indicates that an urgent response may be needed so as to safeguard the individuals concerned. The use of this tool must be balanced against the legal criteria for the Deprivation of Liberty Safeguards which remains unchanged. **The criteria should be used as an indicative guide only as it will generally be based on information provided by the Managing Authority in the application and each case must be judged on its own facts.**

HIGHER	MEDIUM	LOWER
• Psychiatric or Acute Hospital and not free to leave • Continuous 1:1 care during the day and / or night • Sedation/medication used frequently to control behaviour • Physical restraint used regularly – equipment or persons • Restrictions on family/friend contact (or other Article 8 issue) • Objections from relevant person (verbal or physical) • Objections from family /friends • Attempts to leave • Confinement to a particular part of the establishment for considerable period of time • New or unstable placement • Possible challenge to Court of Protection, or Complaint • Already subject to DoL about to expire	• Asking to leave but not consistently • Not making any active attempts to leave • Appears to be unsettled some of the time • Restraint or medication used infrequently. • Appears to meet some but not all aspects of the acid test	• Minimal evidence of control and supervision • No specific restraints or restrictions being used. E.g. in a care home not objecting, no additional restrictions in place. • Have been living in the care home for some time (at least a year) • Settled placement in care home/hospital placement, no evidence of objection etc. but may meet the requirements of the acid test. • End of life situations, intensive care situations which may meet the acid test but there will be no benefit to the person from the Safeguards

CASE NO:		DATE:		PRIORITISED BY :
SUMMARY OF CRITERIA				
ALLOCATED PRIORITY:				

Loraine Currie ADASS Task Force November 2014

Case ID Number:							
DEPRIVATION OF LIBERTY SAFEGUARDS FORM 3 **AGE, MENTAL CAPACITY, NO REFUSALS, BEST INTERESTS ASSESSMENTS AND SELECTION OF REPRESENTATIVE**							
This combined form contains 4 separate assessments and includes selection of representative. If any assessment is negative there is no need to complete the others unless specifically commissioned to do so by the Supervisory Body.							
Please indicate which assessments have been completed *(*Supervisory Bodies will vary in practice as to who completes the Mental Capacity Assessment)*							
Age		Mental Capacity*		No Refusals		Best Interests	
This form is being completed in relation to a request for a Standard Authorisation							
This form is being completed in relation to a review of an existing Standard Authorisation under Part 8 of Schedule A1 to the Mental Capacity Act 2005.							
Full name of the person being assessed							
Date of birth *(or estimated age if unknown)*					Est. Age		
This also constitutes the Age Assessment. If there is any uncertainty regarding the person's age, please provide additional information at the end of the form.							
Name and address of the care home or hospital in which the person is, or may become, deprived of liberty							
Name of the Assessor							
Address of the Assessor							c/ DoLS Team Herefordshire Council Plough Lane Hereford HR4 0LE
Profession of the Assessor							
Name of the Supervisory Body							
The present address of the person if different from the care home or hospital stated above.							

In carrying out this assessment I have met or consulted with the following people		
NAME	**ADDRESS**	**CONNECTION TO PERSON BEING ASSESSED**

The following interested persons have not been consulted for the following reasons		
NAME	**REASON**	**CONNECTION TO THE PERSON BEING ASSESSED**

I have considered the following documents *(e.g. current care plan, medical notes, daily record sheets, risk assessments)*

DOCUMENT NAME	DATED

MENTAL CAPACITY ASSESSMENT	
The following practicable steps have been taken to enable and support the person to participate in the decision making process:	
In my opinion the person **LACKS** capacity to decide whether or not they should be accommodated in this hospital or care home for the purpose of being given the proposed care and/or treatment, and the person is unable to make this decision because of an impairment of, or a disturbance in the functioning of, the mind or brain.	
In my opinion the person **HAS** capacity to decide whether or not they should be accommodated in this hospital or care home for the purpose of being given the proposed care and/or treatment	
Stage One: What is the impairment of, or disturbance in the functioning of the mind or brain?	
Stage Two: Functional test	
a. The person is unable to understand the information relevant to the decision *Record how you have tested whether the person can understand the information, the questions used, how you presented the information and your findings.*	
b. The person is unable to retain the information relevant to the decision *Record how you tested whether the person could retain the information and your findings. Note that a person's ability to retain the information for only a short period does not prevent them from being able to make the decision.*	
c. The person is unable to use or weigh that information as part of the process of making the decision *Record how you tested whether the person could use and weigh the information and your findings.*	
d. The person is unable to communicate their decision (whether by talking, using sign language or any other means) *Record your findings about whether the person can communicate the decision.*	
Stage Three: *Explain why the person is unable to make the specific decision because of the impairment of, or disturbance in the functioning of, the mind or brain.*	

NO REFUSALS ASSESSMENT	
To the best of my knowledge and belief the requested Standard Authorisation **would not** conflict with an Advance Decision to refuse medical treatment or a decision by a Lasting Power of Attorney, or Deputy, for Health and Welfare.	
To the best of my knowledge and belief the requested Standard Authorisation **would** conflict with an Advance Decision to refuse medical treatment or a decision by a Lasting Power of Attorney, or Deputy, for Health and Welfare.	
Please describe further:	
There is not a valid Advance Decision, Lasting Power of Attorney or Deputy for Health and Welfare in place	

BEST INTERESTS ASSESSMENT	
MATTERS THAT I HAVE CONSIDERED AND TAKEN INTO ACCOUNT	
I have considered and taken into account the views of the relevant person	
I have considered what I believe to be all of the relevant circumstances and, in particular, the matters referred to in section 4 of the Mental Capacity Act 2005	
I have taken into account the conclusions of the mental health assessor as to how the person's mental health is likely to be affected by being deprived of liberty	
I have taken into account any assessments of the person's needs in connection with accommodating the person in the hospital or care home	
I have taken into account any care plan that sets out how the person's needs are to be metwhile the person is accommodated in the hospital or care home	
In carrying out this assessment, I have taken into account any information given to me, or submissions made, by any of the following: (a) any relevant person's representative appointed for the person (b) any donee of a Lasting Power of Attorney or Deputy (c) any IMCA instructed for the person in relation to their current or proposed deprivation of liberty	

BACKGROUND INFORMATION

Background and historical information relating to the current or potential deprivation of liberty.
For a review look at previous conditions and include comments on previous conditions set.

VIEWS OF THE RELEVANT PERSON

Provide details of their past and present wishes, values, beliefs and matters they would consider if able to do so:

VIEWS OF OTHERS

THE PERSON IS DEPRIVED OF THEIR LIBERTY In my opinion the person is, or is to be, kept in the hospital or care home for the purpose of being given the relevant care or treatment in circumstances that deprive them of liberty **Note:** *if the answer is No then the person does not satisfy this requirement*	**YES** **NO**	

The reasons for my opinion:

Note: *Consider the concrete situation of the person including type, duration, effects and manner of implementation of the measures in question in order to determine whether they meet the acid test of continuous (or complete) supervision AND control AND are not free to leave.*

Objective*: Applying the acid test should provide evidence of confinement in a particular restricted space for more than a negligible period of time. Refer to the descriptors in the DoLS Code of Practice in light of the acid test.*

Subjective: *Evidence that the person lacks capacity to consent to being kept in the hospital or care home for the purpose of being given the relevant care or treatment.*

The placement is imputable to the State because:

It is necessary to deprive the person of their liberty in this way in order to prevent harm to the person. The reasons for my opinion are:	**YES** **NO**	

Describe the risks of harm to the person that could arise which make the deprivation of liberty necessary. Support this with examples and dates where possible. Include severity of any actual harm and the likelihood of this happening again.

Depriving the person of their liberty in this way is a proportionate response to the likelihood that the person will otherwise suffer harm and to the seriousness of that harm. The reasons for my opinion are:	**YES**	
	NO	

With reference to the risks of harm described above explain why deprivation of liberty is justified. Detail how likely it is that harm will arise (i.e. is the level of risk sufficient to justify a step as serious as depriving a person of liberty?). Why is there no less restrictive option? What else has been explored? Why is depriving the person of liberty a proportionate response to the risks of harm described above?

This is in the person's best interests. **Note:** *you should consider section 4 of the Mental Capacity Act 2005, the additional factors referred to in paragraph 4.61 of the Deprivation of Liberty Safeguards Code of Practice and all other relevant circumstances. Remember that the purpose of the person's deprivation of liberty must be to give them care or treatment. You must consider whether any care or treatment can be provided effectively in a way that is less restrictive of their rights and freedom of action. You should provide evidence of the options considered. In line with best practice this should consider not just health related matters but also emotional, social and psychological wellbeing.*	**YES**	
	NO	

The reasons for my opinion are:

After giving your reasons above you should now carry out analysis of the benefits and burdens or each option identified**.**

Option 1:

Benefits:

Burdens:

Option 2:
Benefits:

Burdens:

(Repeat process if there are more options)

BEST INTERESTS REQUIREMENT IS NOT MET ***This section must be completed if you decided that the best interests requirement is not met.***	
For the reasons given above, it appears to me that the person **IS, OR IS LIKELY TO BE,** deprived of liberty but this is not in their best interests. In my view, the deprivation of liberty under the Mental Capacity Act 2005 is not appropriate. Consequently, unless the deprivation of liberty is authorised by the Court of Protection or under another statute, the person is, or is likely to be, subject to an unauthorised deprivation of liberty.	
A Safeguarding Adult enquiry must be considered for any unauthorised deprivation of liberty. Please place a cross in the box if a referral has been made. Date of Referral:	

Please offer any suggestions that may be beneficial to the Safeguarding Adult process, commissioners and / or providers of services in deciding on their future actions or any others involved in the resolution process.

directors of adass adult social services

Department of Health

BEST INTERESTS REQUIREMENT IS MET ***The maximum authorisation period must not exceed one year***
In my opinion, the maximum period it is appropriate for the person to be deprived of liberty under this Standard Authorisation is: [ ] **The reasons for choosing this period of time are:** *Please explain your reason(s)* **DATE WHEN THE STANDARD AUTHORISATION SHOULD COME INTO FORCE** I recommend that the Standard Authorisation should come into force on: [ ]

RECOMMENDATIONS AS TO CONDITIONS (Not applicable for review) **Choose ONE option only**	
I have no recommendations to make as to the conditions to which any Standard Authorisation should or should not be subject (proceed to the ***Any Other Relevant*** information section of this form).	
I recommend that any Standard Authorisation should be subject to the following conditions	
1	
2	
3	
4	
RECOMMENDATIONS AS TO VARYING ANY CONDITIONS (Review only) **Choose ONE option only**	
The exisiting conditions are appropriate and should not be varied	
The existing conditions should be varied in the following way:	
1	
2	
3	
4	
SHOULD ANY RECOMMENDED CONDITIONS NOT BE IMPOSED:	
I would like to be consulted again, since this may affect some of the other conclusions that I have reached in my assessment.	

I do not need to be consulted again, since I do not think that the other conclusions reached in this assessment will be affected.	

ANY OTHER RELEVANT INFORMATION

Please use the space below to record any other relevant information, including any additional conditions that should or should not be imposed and any other interested persons consulted by you.

RECOMMENDATIONS, ACTIONS AND / OR OBSERVATIONS FOR CARE MANAGER / SOCIAL WORKER / COMMISSIONER / HEALTH PROFESSIONAL

SELECTION OF REPRESENTATIVE– *place a cross in one box*

(Note that the Best Interests Assessor must confirm below whether the proposed representative is eligible before recommending them)

The relevant person has capacity to select a representative and wishes to do so. **Name of person selected**:	
The relevant person who lacks capacity to select a representative but has a Lasting Power of Attorney, or Deputy, for Health and Welfare, this decision is within the scope of their authority and they have selected the following person **Name of person selected**:	
Neither the relevant person nor their Donee or Deputy wish to, or have the authority to, select a representative and therefore the Best Interests Assessor will select and recommend a representative.	

RECOMMENDATION OF REPRESENTATIVE – *place a cross in one box*

I recommend that the Supervisory Body appoints the representative selected by the relevant person above and confirm that they are eligible and would in my opinion maintain contact with the person, represent and support them in matters relating to or connected with the Standard Authorisation if appointed. (*Read guidance notes for clarification of eligibility)*	
I have selected and recommend that the Supervisory Body appoints the representative identified below. In so doing I confirm that: • the person this assessment is about (who may have capacity but does not wish to select a representative) and / or their Donee or Deputy does not object to my recommendation; • the proposed representative agrees to act as such, is eligible, and would in my opinion maintain contact with the person, represent and support them in matters relating to or connected with the Standard Authorisation if appointed. (*Read guidance notes for clarification of eligibility).*	
Please tick this box if this section is being completed because an existing representative's appointment has been terminated before it was due to expire and it is necessary for the Supervisory Body to appoint a replacement	
Full name of recommended representative	

Their address	
Telephone number(s)	
Relationship to the relevant person	
Reason for selection	
Are you requesting a 39D IMCA to support with role of representative?	

If you are not able to name a representative please place a cross in the box and record your reason below	

PLEASE NOW SIGN AND DATE THIS FORM			
Signed		Date	
Print Name		Time	

Case ID Number:

DEPRIVATION OF LIBERTY SAFEGUARDS FORM 4

MENTAL CAPACITY, MENTAL HEALTH, and ELIGIBILITY ASSESSMENTS

This combined form contains 3 separate assessments; if any assessment is negative there is no need to complete the others unless specifically commissioned to do so by the Supervisory Body.

Please indicate which assessments have been completed
*(*Supervisory Bodies will vary in practice as to who completes the Mental Capacity assessment)*

Mental Capacity*****		Mental Health		Eligibility	
This form is being completed in relation to a request for a standard authorisation.					
This form is being completed in relation to a review of an existing Standard Authorisation under Part 8 of Schedule A1 to the Mental Capacity Act 2005.					

Full name of the person being assessed			
Date of birth *(or estimated age if unknown)*		Est. Age	
Name of the care home or hospital where the person is, or may become, deprived of liberty			
Name and address of the Assessor			
Profession of the Assessor			
Name of the Supervisory Body			
The present address of the person being assessed if different from the care home or hospital stated above.			

MENTAL CAPACITY ASSESSMENT

The following practicable steps have been taken to enable and support the person to participate in the decision making process:

In my opinion the person **LACKS** capacity to decide whether or not they should be accommodated in this hospital or care home for the purpose of being given the proposed care and/or treatment, and the person is unable to make this decision because of an impairment of, or a disturbance in the functioning of, the mind or brain.	
In my opinion the person **HAS** capacity to decide whether or not they should be accommodated in this hospital or care home for the purpose of being given the proposed care and/or treatment	

Stage One: What is the impairment of, or disturbance in the functioning of the mind or brain?

Stage Two: Functional test

a. The person is unable to understand the information relevant to the decision *Record how you have tested whether the person can understand the information, the questions used, how you presented the information and your findings.*	
b. The person is unable to retain the information relevant to the decision *Record how you tested whether the person could retain the information and your findings. Note that a person's ability to retain the information for only a short period does not prevent them from being able to make the decision.*	
c. The person is unable to use or weigh that information as part of the process of making the decision *Record how you tested whether the person could use and weigh the information and your findings.*	
d. The person is unable to communicate their decision (whether by talking, using sign language or any other means) *Record your findings about whether the person can communicate the decision.*	

Stage Three: *Explain why the person is unable to make the specific decision because of the impairment of, or disturbance in the functioning of, the mind or brain.*

MENTAL HEALTH ASSESSMENT

In carrying out this assessment, I have taken into account any information given to me, and any submissions made by any of the following:

(a) The relevant person's representative

(b) Any IMCA instructed for the person in relation to their deprivation of liberty

(c) I have consulted the Best Interests Assessor for any relevant information about possible objections to treatment, including whether any donee or Deputy has made a valid decision to consent to any mental health treatment.

Place a cross in EITHER box below

In my opinion the person **IS NOT** suffering from a mental disorder within the meaning of the Mental Health Act 1983 (disregarding any exclusion for persons with learning disability). ***Provide a rationale for your opinion, including details of their symptoms, diagnosis and behaviour***	

In my opinion the person **IS** suffering from a mental disorder within the meaning of the Mental Health Act 1983 (disregarding any exclusion for persons with learning disability). ***Provide a rationale for your opinion, including details of their symptoms, diagnosis and behaviour***	

In my opinion, the person's mental health and wellbeing is likely to be affected by being deprived of liberty in the following ways:

directors of adass adult social services

Department of Health

ELIGIBILITY ASSESSMENT

*Reference to Cases A to E refers to the cases of ineligibility for DoLS described in **MCA Schedule 1A***

Answer ALL of the following questions Yes or No, by placing a cross in the relevant box.

The person is detained under section 2, 3, 4, 35-38, 44, 45A, 47, 48 or 51 of the Mental Health Act 1983(*Case A*).	Yes	
	No	
The person is subject to s17 leave or conditional discharge (*Case B*), or Community Treatment Order (*Case C*), or Guardianship (*Case D*), and a Standard Authorisation would be incompatible with a Mental Health Act requirement (e.g. as to residence)	Yes	
	No	

If you have answered "Yes" to either of the above, the person is ineligible for DoLS.
Please give reasons/explanation for your answer:

Hospital Cases Only (*Case E*)

The purpose of detention is to receive medical treatment for mental disorder ***Please explain further:***	Yes	
	No	
In my opinion this person could be detained under the Mental Health Act (on the assumption that the person cannot be assessed and treated under the Mental Capacity Act 2005 ***Please explain further:***	Yes	
	No	

If the answer to both of the above statements is YES please consider the next two statements
If either of the below are ticked the person is ineligible for DoLS

The person objects, or would object if able to do so, to some or all of the medical treatment for a mental disorder ***Please explain further:***	Yes	
Are the deprivation of liberty safeguards the least restrictive way of best achieving the proposed care and treatment? ***Describe the least restrictive way of best achieving the proposed care and treatment:***	No	

PLEASE NOW SIGN AND DATE THIS FORM

Signed		Date	
Print Name		Time	

In order to safeguard their rights please request that the person is assessed under the Mental Health Act and confirm this below:

CONFIRMATION OF REQUEST FOR MENTAL HEALTH ACT ASSESSMENT

Date and Time of request for Mental Health Act Assessment	
Name of Person to which the request was made	

Case ID Number:		
DEPRIVATION OF LIBERTY SAFEGUARDS FORM 5 **STANDARD AUTHORISATION GRANTED**		
Full name of the person being deprived of liberty		
Name and address of the care home or hospital where the deprivation of liberty is authorised		
Name and address of the Supervisory Body		
Person to contact at the Supervisory Body	Name	
	Telephone	
	Email	

THE SUPERVISORY BODY'S DECISION

This standard authorisation is to come into force on:

Date: Time:

This standard authorisation is to expire at the end of the day on:

Date:

The reasons for this period are:

(The period specified must not exceed the maximum period specified in the best interests assessment)

THE PURPOSE OF THE AUTHORISATION *is to enable the following care or treatment to be given in the hospital or care home.*

CONDITIONS TO WHICH THE STANDARD AUTHORISATION IS SUBJECT:	
This standard authorisation **IS NOT** subject to any conditions.	
This standard authorisation **IS** subject to the following conditions set out immediately below.	
1	
2	
3	
4	

Any additional conditions placed by the Supervisory Body authoriser	
5	
6	
The care home or hospital staff must comply with these conditions. (The Supervisory Body should consult the Best Interests Assessor if their recommendations are not being followed and they have indicated in their assessment report that they would like to be consulted again in that event, since some of the other conclusions that they have reached in their assessment may be affected).	

The authorisation is granted because the Supervisory Body has received written copies of all required assessments and concludes each qualifying requirement is met for the following reasons.	
AGE REQUIREMENT	
The Supervisory Body has seen evidence to confirm that the person is over 18	
NO REFUSALS REQUIREMENT	
The person has not made an Advance Decision or appointed a Lasting Power of Attorney for Health and Welfare under the MCA 2005 and no Deputy for Health and Welfare has been appointed by the Court of Protection ***or***	
Any Advance Decision the person has made does not prevent them being given the treatment proposed, and any decisions made by a done of a Lasting Power of Attorney or Deputy for Health and Welfare do not conflict with the proposals for their accommodation, treatment or care	
MENTAL HEALTH REQUIREMENT	
The Supervisory Body has seen current evidence that the person is suffering from a mental disorder within the meaning of the Mental Health Act 1983 (disregarding any exclusion for persons with a learning disability) ***or***	
An equivalent Mental Health Assessment is being used, dated	
ELIGIBILITY REQUIREMENT	
The Supervisory Body has seen current evidence that accommodating the person is not ineligible to be deprived of liberty by the MCA 2005 by virtue of falling into one of the Cases A-E set out in paragraph 2 of Schedule 1a to the MCA 2005, ***or***	

An equivalent Eligibility Assessment is being used, dated	

MENTAL CAPACITY REQUIREMENT

The Supervisory Body has seen current evidence that the person lacks capacity to make their own decision about whether they should be accommodated in the care home or hospital for the purposes of being given care and or treatment. This is because of an impairment or disturbance in the functioning of their mind or brain, ***or***	
An equivalent Mental Capacity Assessment is being used, dated	

BEST INTERESTS REQUIREMENT

The Supervisory Body has seen current evidence provided by the Best Interest Assessor. This confirms that it is in the person's best interests to be deprived of their liberty and that the deprivation is necessary to prevent harm to the person, and the deprivation is a proportionate response to the likelihood of the person suffering harm and the seriousness of that harm, ***or***	
An equivalent Best Interests Assessment is being used, dated	

EVIDENCE OF SUPERVISORY BODY SCRUTINY

The authoriser should indicate why they concur with the conclusions of the assessors reports and demonstrate overall scrutiny of the process:

Signed *(on behalf of the Supervisory Body)*	Signature	
	Print Name	
	Date	

APPOINTMENT OF A REPRESENTATIVE - 1st copy to be retained by representative

Details of the person to be appointed

The Supervisory Body appoints the person named below to represent the relevant person, in so doing it confirms that they meet the eligibility requirements of the Deprivation of Liberty Safeguards provisions of the Mental Capacity Act 2005. This person was identified as representative by:

The Relevant Person	
The Best Interests Assessor	
The Best Interests Assessor indicated that they were not able to select an eligible person as representative. It is therefore necessary for the Supervisory Body to select a representative for this person.	

Full name of Relevant Person's Representative	

Address	
Telephone	
Email	
Relationship to Relevant Person	
This appointment lasts for the same period as the Standard Authorisation to which it relates.	

APPOINTMENT OF A REPRESENTATIVE
2nd copy – to be returned to Supervisory Body

Details of the person to be appointed

The Supervisory Body appoints the person named below to represent the relevant person, in so doing it confirms that they meet the eligibility requirements of the Deprivation of Liberty Safeguards provisions of the Mental Capacity Act 2005. This person was identified as representative by:

The Relevant Person	
The Best Interests Assessor	
The Best Interests Assessor indicated that they were not able to select an eligible person as representative. It is therefore necessary for the Supervisory Body to select a representative for this person.	

Full name of Relevant Person's Representative	
Address	
Telephone	
Email	
Full name of Relevant Person	
Relationship to Relevant Person	
This appointment lasts for the same period as the Standard Authorisation to which it relates.	

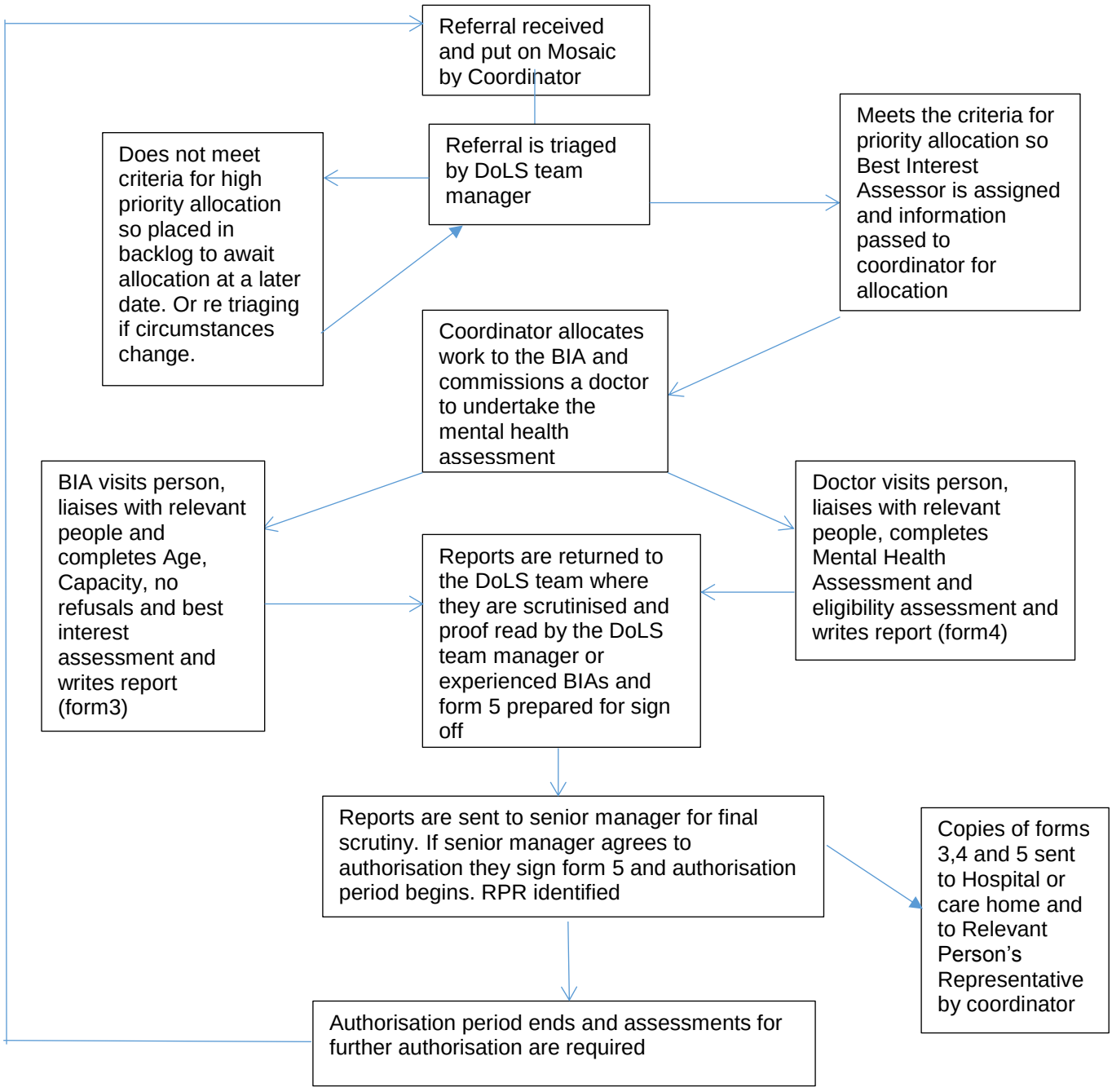
Agreement of the appointed representative:

I am willing to be appointed as this person's representative under the Deprivation of Liberty Safeguards provisions of the Mental Capacity Act 2005 and I am aware of the functions that I am expected to perform

Signed	
Date	

Please now return this page only to the Supervisory Body indicated below	
Name and address of the Supervisory Body	

Person to contact at the Supervisory Body	Name	
	Telephone	
	Email	


Referral received and put on Mosaic by Coordinator
Referral is triaged by DoLS team manager
Does not meet criteria for high priority allocation so placed in backlog to await allocation at a later date. Or re triaging if circumstances change.
Meets the criteria for priority allocation so Best Interest Assessor is assigned and information passed to coordinator for allocation
Coordinator allocates work to the BIA and commissions a doctor to undertake the mental health assessment
BIA visits person, liaises with relevant people and completes Age, Capacity, no refusals and best interest assessment and writes report (form3)
Doctor visits person, liaises with relevant people, completes Mental Health Assessment and eligibility assessment and writes report (form4)
Reports are returned to the DoLS team where they are scrutinised and proof read by the DoLS team manager or experienced BIAs and form 5 prepared for sign off
Reports are sent to senior manager for final scrutiny. If senior manager agrees to authorisation they sign form 5 and authorisation period begins. RPR identified
Copies of forms 3,4 and 5 sent to Hospital or care home and to Relevant Person's Representative by coordinator
Authorisation period ends and assessments for further authorisation are required

Herefordshire Council

Meeting:	**Adults and wellbeing scrutiny committee**
Meeting date:	**Tuesday 17 July 2018**
Title of report:	**Committee work programme 2018-19**
Report by:	**Democratic Services Officer**

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose and summary

To consider the committee's work programme for the 2018-19 municipal year.

Recommendation(s)

That:

(a) the draft work programme (appendix 1) be approved, subject to any amendments the committee wishes to make;

(b) the committee determines the appropriate approach taken to the scrutiny of topics in the work programme, including the establishment of any task and finish groups, their chairmanship, or the undertaking of a spotlight review;

(c) the scrutiny committees review the forward plan to determine whether to carry out pre-decision call-in on any of those scheduled executive decisions and

(d) the committee determines whether there is any matter for which it wishes to exercise its powers of co-option.

Alternative options

1. It is for the committee to determine its work programme to reflect the priorities facing Herefordshire. The committee needs to be selective and ensure that the work programme is focused, realistic and deliverable within existing resources.

Key considerations

Outcome of scrutiny workshop

1 A workshop was held on 4 June 2018 in order for members to contribute to the development of an annual work programme. The principal purpose of the workshop was for members to identify a shortlist of items for scrutiny during the coming year, but also to consider approaches to ensuring the effectiveness of scrutiny. As well as committee members, the workshops were attended by non-scrutiny members, the cabinet member for health and wellbeing, the chief officer of Healthwatch, directors of NHS Herefordshire Clinical Commissioning Group (CCG), and supported by senior council officers and democratic services officers.

2 Members were invited to identify topics for scrutiny and these were allocated to suggested committee dates for the coming year. The emphasis was on identifying priority areas for scrutiny, and recognising a need for some flexibility in allowing for urgent items or to consider decisions that have been called-in for scrutiny. Members used a prioritisation flow chart (see appendix 2) to assess which items should be included in the scrutiny committee work programme. Members were invited to consider what type of scrutiny would best apply to work programme items. In addition, whether an item should be called-in for pre-decision scrutiny or whether an item should be conducted through task and finish group, for example.

3 It was recognised that the selected topics may each be suited to different scrutiny approaches, i.e., formal committee items, task and finish groups or scrutiny days. In considering the draft work programme, consideration was given to the most appropriate approach for scrutiny of items, in particular, those with broad or cross cutting themes. It was identified that for some areas of the committee's remit, and where appropriate, it would be helpful for committee members to receive informal briefings on particular themes in order to inform the identification of focused items for further scrutiny in a public committee meeting.

4 The draft work programme is appended for consideration. The work programme will remain under regular review during the year to allow the committee to respond to particular circumstances.

Constitutional Matters

Task and Finish Groups

5 A scrutiny committee may appoint a task and finish group for any scrutiny activity within the committee's agreed work programme. A committee may determine to undertake a task and finish activity itself as a spotlight review where such an activity may be undertaken in a single session; the procedure rules relating to task and finish groups will apply in these circumstances.

6 The relevant scrutiny committee will approve the scope of the activity to be undertaken, the membership, chairman, timeframe, desired outcomes and what will not be included in the work. A task and finish group will be composed of a least 2 members of the committee, other councillors (nominees to be sought from group leaders with un-affiliated members

also invited to express their interest in sitting on the group) and may include, as appropriate, co-opted people with specialist knowledge or expertise to support the task. In appointing a chairman of a task and finish group the committee will also determine, having regard to the advice of the council's monitoring officer and statutory scrutiny officer, whether the scope of the activity is such as to attract a special responsibility allowance.

7 The committee is asked to determine any matters relating to the appointment of a task and finish group and the chairmanship and any special responsibility allowance or undertaking a spotlight review including co-option (see below).

8 The constitution states that scrutiny committees should consider the forward plan as the chief source of information regarding forthcoming key decisions. Forthcoming decisions can be viewed under the forthcoming decisions link on the council's website:

http://councillors.herefordshire.gov.uk/mgDelegatedDecisions.aspx?&RP=0&K=0&DM=0&HD=0&DS=1&Next=true&H=1&META=mgforthcomingdecisions&V=1

9 Should committee members become aware of additional issues for scrutiny during year they are invited to discuss the matter with the chairman and the statutory scrutiny officer.

Co-option

10 A scrutiny committee may co-opt a maximum of two non-voting people as and when required, for example for a particular meeting or to join a task and finish group. Any such co-optees will be agreed by the committee having reference to the agreed work programme and/or task and finish group membership.

11 The committee is asked to consider whether it wishes to exercise this power in respect of any matters in the work programme.

Scheduled meetings

12 It is proposed that in the delivery of the work programme, the following committee dates be scheduled. All meetings, unless otherwise published, will commence at 10am:

17 July 2018
20 September 2018
2 October 2018
27 November 2018
29 January 2019
19 March 2019

Community impact

13 In accordance with our adopted code of corporate governance, Herefordshire Council must ensure that it has an effective performance management system that facilitates effective and efficient delivery of planned services. Effective financial management, risk management and internal control are important components of this performance management system. Herefordshire Council is committed to promoting a positive working culture that accepts, and encourages constructive challenge, and recognises that a culture and structure for scrutiny are key elements for accountable decision making, policy development, and review.

Equality duty

14 Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. All Herefordshire Council members are trained and aware of their Public Sector Equality Duty and Equality considerations are taken into account when serving on committees.

Resource implications

15 The costs of the work of the committee will have to be met within existing resources. It should be noted the costs of running scrutiny will be subject to an assessment to support appropriate processes.

Legal implications

16 The remit of the scrutiny committee is set out in part 3 section 4 of the constitution and the role of the scrutiny committee is set out in paragraph 2.6.5 of the constitution.

17 The council is required to deliver a scrutiny function.

Risk management

17 There is a reputational risk to the council if the scrutiny function does not operate effectively. The arrangements for the development and review of the work programme should help mitigate this risk

Consultees

18 Participants at the workshop identified above contributed to the development of the work programme and are encouraged to continue to do so to ensure the work programme remains relevant. The chairman meets every quarter with Healthwatch and with NHS Herefordshire Clinical Commissioning Group to monitor the relevance of items for the work programme. Members of the public are also able to influence the scrutiny work programme through asking for an item to be considered by asking a public question or by contacting the council via the get involved section of the public web-site.

Appendices

Appendix 1 Draft committee work programme for 2018-19

Appendix 2 Scrutiny Work Programme Prioritisation Aid

Background papers

None identified.

Further information on the subject of this report is available from
Ruth Goldwater, , email: Ruth.Goldwater@herefordshire.gov.uk

ADULTS AND WELLBEING SCRUTINY COMMITTEE
ITEMS IDENTIFIED FOR INCLUSION IN THE WORK PROGRAMME

Adults and wellbeing scrutiny committee work programme 2018-19		
25 June 2018 (2.00pm)	**Scrutiny members' workshop**	
Mental health	Joint workshop for AW and CYP scrutiny members to focus on: - Approach - Wellbeing - 2gether NHS Trust service delivery - Veterans' mental health	Public Health team Herefordshire CCG (commissioner) 2gether NHS Foundation Trust (provider)
17 July 2018 (10am)	**Public committee**	
Review of deprivation of liberty safeguarding (DoLS)	To consider an update to review the arrangements for the statutory DoLS provision and make recommendations for consideration by the executive.	Adults and wellbeing provider representative
Committee work programme	To agree the work programme following the work programming session held on 4 June 2018.	
17 July 2018 (2pm)	**Scrutiny members' workshop**	
Recommissioning of domestic abuse service	Joint workshop for AW and CYP scrutiny members. To be briefed on the arrangements for the recommissioning of the domestic abuse service in order to identify any future items for inclusion in the work programme.	Adults and wellbeing representatives Partner representatives
20 September 2018 (2pm)		
NHS Continuing Healthcare Framework applicable to Herefordshire	To seek the views of the committee following a jointly commissioned review by Herefordshire Council and Herefordshire Clinical Commissioning Group. To note the recommendations within the review report and the Action Plan to progress matters to establish an agreed policy and process to aid operational implementation.	
27 September 2018 (2pm)	**Scrutiny members' workshop**	
Mental Health	Follow-up from 25 June 2018, to include an update on the local maternity system, noting the link to perinatal care and parental mental health, in order to identify any future items for inclusion in	

	the work programme.	
2 October 2018 (10am)	**Public committee**	
Public health update	To review prevention strategies and outcomes to include NHS health checks and plans for distribution of 'flu vaccinations for the winter season.	
Annual budget	To consider budget proposals to comment to general scrutiny committee.	
15 November 2018 (2pm)	**Scrutiny members' workshop**	
Health and care system leadership, integration and Better Care Fund	Update on the work of the Health and Wellbeing Board and its priorities as system leader, the Herefordshire and Worcestershire Sustainability and Transformation Partnership (STP) plan, One Herefordshire and the management of the Better Care Fund. To be briefed on developments and/or proposals on these areas and identify any issues to take forward for a public meeting.	Adults and wellbeing commissioning team Herefordshire CCG
27 November 2018 (10am)	**Public committee**	
Spotlight review on homelessness	To investigate the approaches to avoidance of homelessness, and the impact of the homelessness reduction duty, mental health, and universal credit. To be followed up in summer 2019.	
Care at home	To follow up from committee held on 16 May 2018 to include carer's support and capacity.	
29 January 2019 (10am)	**Public committee**	
Learning disability strategy update	To review the implementation of the strategy following a scrutiny review of services on 27 March 2018.	
19 March 2019 (10am)	**Public committee**	
Health and care system leadership, integration and Better Care Fund	To review the work of the Health and Wellbeing Board and its priorities as system leader and developments on the Herefordshire and Worcestershire Sustainability and Transformation Partnership (STP) plan, One Herefordshire and the management of the Better Care Fund.	
Further items for consideration		
Date to be confirmed (early	**Scrutiny members' workshop**	

2019)		
Dementia workshop	To be briefed on developments around strategy and care for people with dementia in order to identify any future items for inclusion in the work programme.	
Timing to be confirmed	**Briefing note**	
GP capacity	To update members on the national NHS recruitment and retention strategy for general practice and the local arrangements for increasing capacity for Herefordshire in order to identify any future items for inclusion in the work programme.	
Date TBC (early 2019)		
Care market and market capacity including care workforce (care heroes campaign impact)	Timing and approach to be confirmed	

Annex 1: SCRUTINY WORK PLAN PRIORITISATION AID