directors of adass
adult social services
West Midlands

Preparing for CQC Assessments

Waiting Lists
27th July 2023

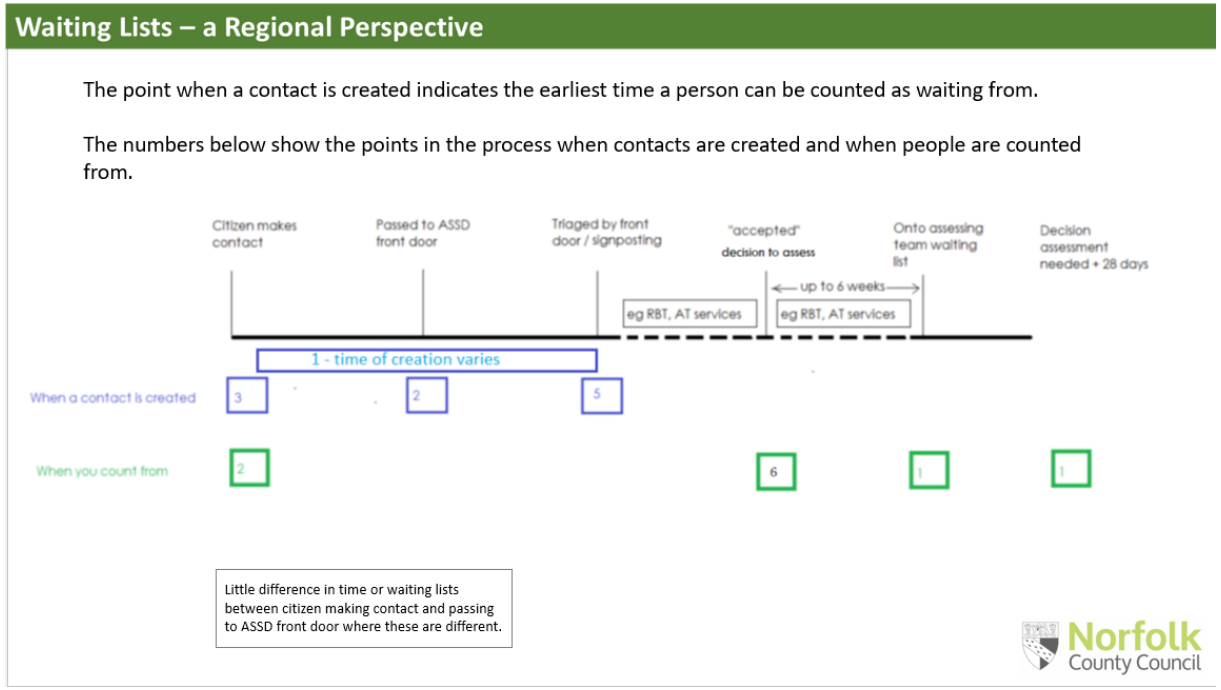
improvement assurance
Sector led
Sector led
innovation
Sector led

Why the focus on waiting lists?

- Care Act s.1 duties - e.g.
  - Assessments, Meeting Needs - "appropriate", "proportionate", "**reasonable**"
  - Safeguarding - "**swiftly**"
  - Reviews – "**every 12 months**"
  - Continuity on transfer – "**prior to the day of the move**"
- CQC Quality Statements
  - E.g. care and support needs are assessed in a **timely** and consistent way; Section 42 safeguarding enquiries are carried out sensitively and **without delay**
  - Learning from the Pilot Assessments – **Waiting Lists discussed in every session**
  - How defined, how many waiting, how risk managed?
- Policy priorities linked to system performance
  - E.g. Market Sustainability & Improvement Fund "**Reducing adult social care waiting times**"

Approaches to Counting – does it matter?

- "The assessment process starts from when local authorities begin to collect information about the person" (Care Act Statutory Guidance)
- LAs start to "count" people waiting at different points in the customer journey
- CQC interested in
  - *How are waiting lists (or times) being counted?*
  - *What's the target standard and how are you performing against it?*
  - *What are you doing to improve, if there's a gap*
  - *How are you managing risk?*



Recent Ombudsman cases: what's "Reasonable" ?

- Assessment and care and support plan not completed for person transferring from another LA before the move
- 20-month, ongoing delay in providing a needs assessment
- Failing to conduct a re-assessment
- Delays in completing a Care Act assessment, when LGSCO found that no more than 4 months would have been reasonable
- Failing to assess DoLS requests in accordance with timescales set out in the Mental Capacity Act regulations, citing 'significant delays' and the 'highest backlog in England'

Worth remembering that CQC's review of case files will consider feedback on the person's experience of care and support, including complaints – knowing how many of your complaints relate to waiting times is probably a useful question to consider.

Waiting Times and DoLS

Deprivation of liberty to protection of liberty

Lorraine Curry, WM ADASS Associate

It’s time to start building the lifeboat.

Is LPS delayed?

- *'the Government has taken the difficult decision to delay the implementation of the Liberty Protection Safeguards beyond the life of this Parliament'.*
- This is slightly more than a delay
- The decision about taking forward LPS at all will be for the next Parliament
- It is unlikely to be an immediate priority
- General election by January 2025

What are the Deprivation of Liberty safeguards (why does it matter)

- It is a scheme for hospital and care home residents to prevent arbitrary detention.
- It is unlawful to deprive liberty anywhere without a lawful procedure. The setting only determines the route.
- The emphasis should always have been on the word SAFEGUARDS instead it was on the word DEPRIVATION
- A Supreme Court decision in 2014 gave us an acid test for what confinement means. Complete or continuous supervision and control and not free to leave. Numbers rose from an anticipated maximum 20,000 to over 200,000
- It is an out-of-control process creating huge backlogs just from care home and hospital requests. Many more people from 16 onwards are being identified for community dol applications to Court.

Setting only determines the route

- Care home or hospital - DoLS
- Anywhere else – Court (various options) authorised i.e. community dol authorisation.
- Same principles, same acid test
- Nuanced slightly for 16/17 year olds
- Nuanced more under 16
- Article 5 procedures (HRA Right to liberty and security)

What does the regional picture look like

Applications not completed as of 31st March 2022

The total number of applications reported as not completed as of 31st March 2022 was **124,145.**

Backlog comparison

North-East	4,605
North-West	18,665
Yorkshire and The Humber	10,870
East Midlands	13,160
West Midlands	9,925
East of England	13,500
London	7,005
South-East	23,400
South-West	20.965

West Midlands data 2021-22

- 26,730 applications received
- 6115 from acute hospitals (270 Granted 4.4% over half from one Council)
- 485 from mental health settings
- 9580 from care homes with nursing
- 7460 from residential care homes
- 27,130 applications completed
- 13,515 Granted and 13, 615 not granted
- Total not completed 9,925
- **3705 People died waiting**

Acute hospital implications

- Only 4% are granted
- Most are discharged before any assessment
- Urgent authorisations provide cover for the hospital but does every patient with an urgent authorisation need to be detained?
- The following need to be considered
  - Careful consideration of whether an authorisation to deprive liberty is needed.
  - Robust assessments of decision specific capacity alongside awareness of mental disorder
  - Consideration of the likely length of stay and the intensity of restrictions.
  - Consideration of whether a standard authorisation will be needed.
  - Consideration of whether the person is receiving life sustaining treatment.
  - Consideration of whether the mental impairment will swiftly resolve following treatment of a physical illness.

- Its time to take back some control

- DoLS is a scheme created for a maximum of 20,000 reducing to 7,000 by 2010.

- Instead, it has increased ten-fold just in care homes and hospitals.

- We are now in new DoLS territory and have to look for good enough rather than a gold star service, we need to focus resources on greatest need.

- But we need to work within the law and particularly to not breach Article 5 –the right to liberty and security of person.

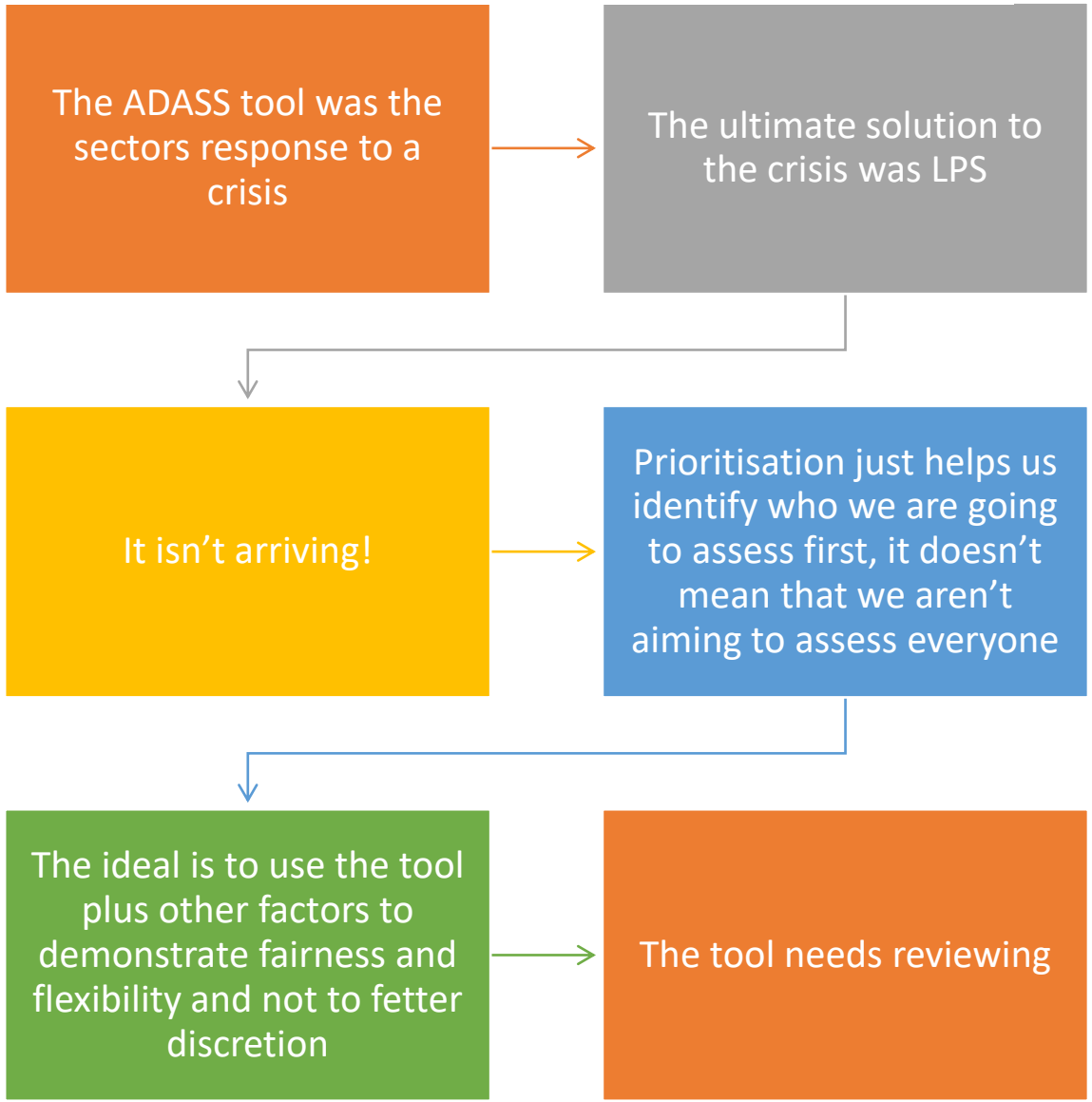
Number waiting	Average assessment time/process
New/renew if known	Average authorisation time
Number incomplete at year end	Level of authorisers
Number completed	Any wait for authorisation
Granted/not granted	Methods of prioritization, Geographical as well as RAG
Breakdown of not granted	Face to face v virtual
Oldest case	Multi buy doctors

Number of acute hospital requests	Use of 6 equivalents
How do you identify priority hospital cases	What hinders the use of 6 equivalent assessments
How do you follow acute hospital referrals • Chase up for discharge • Inappropriate?	Use of 3B
Robust admin	Pilot 4B
Workforce/recruitment issues	Interest in Form 3 revision/pilot

Know your backlog

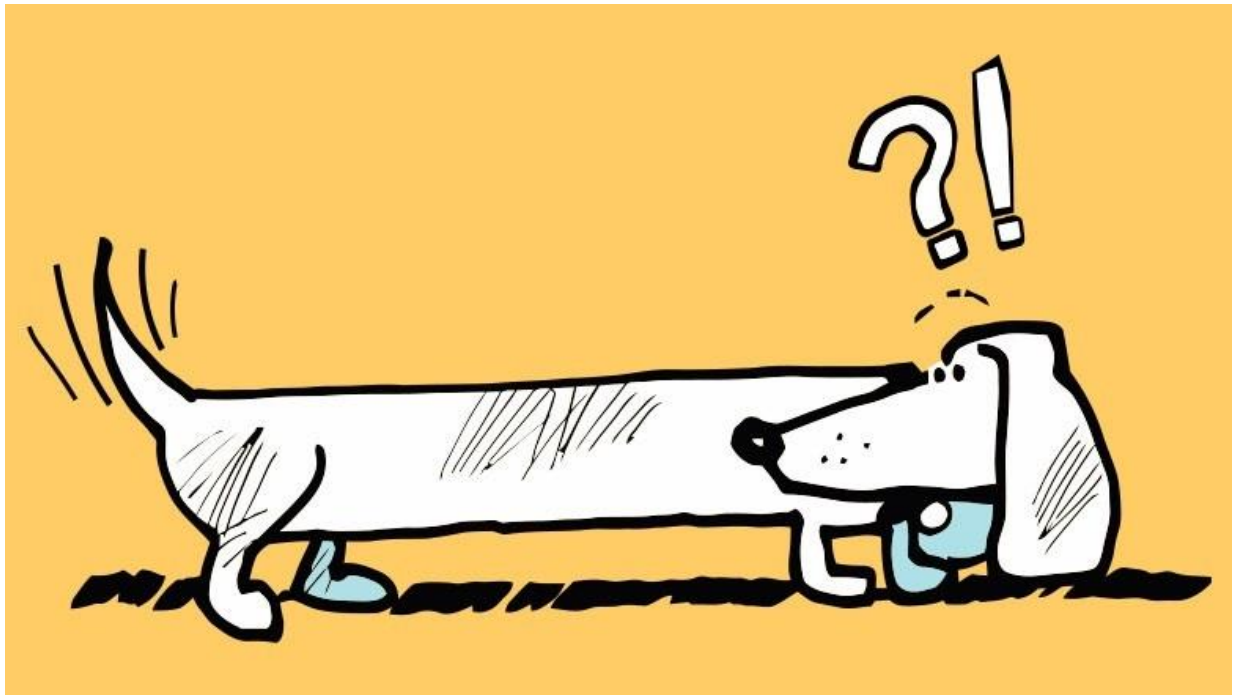
- The message and the point of the clinics is to know your back log
- Its not just one thing
- To see where your particular sticking points are
- Is it staffing or is it process
- Is your system holding up your staff
- Do you have a delay with authorising (who and why)
- Do you have too many acute hospital referrals

Know your process



Tails and dogs

- Because we expected LPS improvements to DoLS have suffered
- Many systems providers have dictated practice through inflexibility
- We haven't updated ADASS tools
- We haven't revisited Forms which need review
- We haven't kept in line with case law and practice changes



- Give a good account
- Be ready with your data and understand what it means (separation between DoLS Leads and performance teams is often unhelpful)
- Understand and be able to explain your workforce (BIA/authoriser)
- Have a clear prioritisation system but show willingness to work outside it
- Have a clear line of accountability, whether to a SAB or an MCA steering group or multi agency group
- Evidence and support legal literacy
- Evidence links with national bodies (NMCF) and support from regional colleagues (WMRDLG)

Its time for a new DoLS

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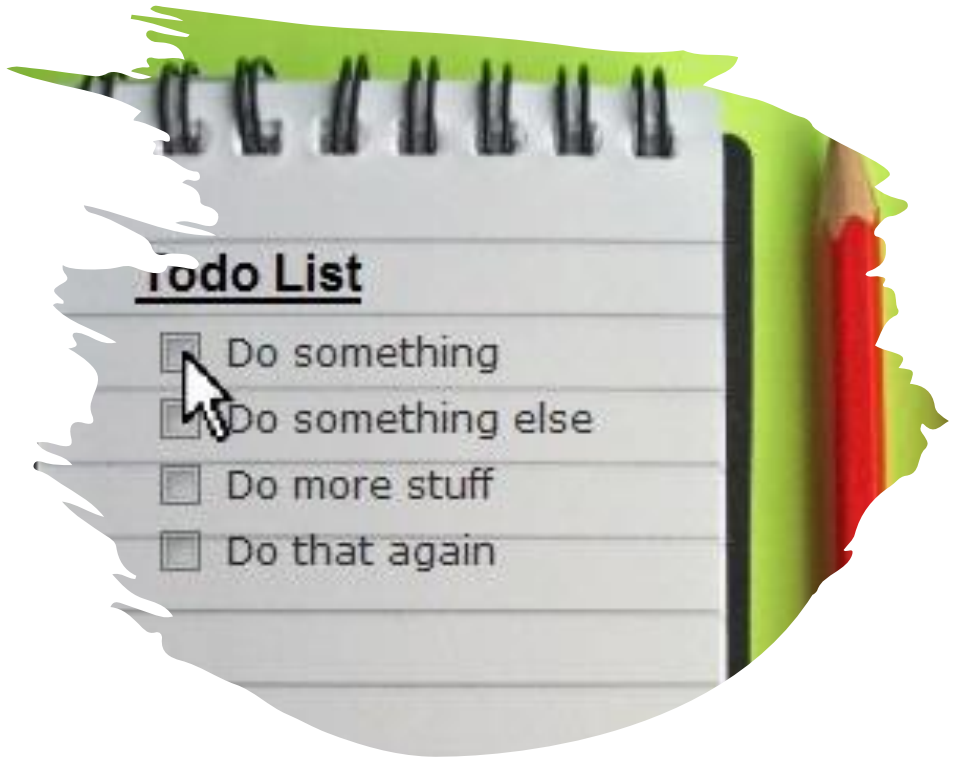
Question: Is it possible to protect liberty, promote the persons voice, be accountable, practice within the law and manage demand?

- Examine what we **must** do against what we **are** doing perhaps with a bit of what we **should** do for good measure
- Work to the Legislation but import some LPS ideas
- Continue to strive for excellence in practice in a more proportionate and pragmatic way
- Target expertise where it is most needed, not every assessment, every time, but focused on those situations where a substantive protection is needed.

Lots to be done, lots that can be done

- Work together to identify how to direct resources to provide substantive protection and apply pragmatic approach to technical protection
- West Midlands Forms review and pilot new forms
- West Midlands Directory
- West Midlands pilot for proposed measures
- Introduction of standard s12 doctors' fees
- Work with regional health colleagues on appropriate acute hospital referrals.
- Identify good and good enough
- Explore report style forms to improve practice and reduce repetition



Community dol applications

- Largely been on the back burner waiting for LPS but cannot wait
- We do not have a regional picture
- Minimal data exists
- Let’s not lose the interest LPS generated from colleagues in Childrens services
- Community dol conference planned for October

Ultimate aim

- Ultimately, we are required to have a system to prevent arbitrary detention
- It needs to **protect** liberty
- If we invest too heavily in every application, we will have even more people who die waiting
- Proportionate, pragmatic, person centred, procedures which are legally compliant

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