



Warwickshire Deprivation of Liberty Safeguards Team Business Continuity Plan - Covid 19

Measures to manage DoLS authorisations during Covid -19

The following measures are proposed instead of face to face visits to ensure protection for those most at risk of Human Rights breaches, to protect the Council from potential legal action and to manage the potential spread of Covid -19.

The Department of Health have issued emergency guidance for the use and application of the Mental Capacity Act (MCA) 2005 and the Deprivation of Liberty Safeguards (Dols) 2009 as there have been no changes to this primary piece of legislation, therefore the principles of the Mental Capacity Act and the safeguards of Dols still apply.

Decision makers will need to take a proportionate approach to all Dols applications, any decision must be taken specifically to each person and not to groups of people.

Best Interest decision making under the Menta Capacity Act remains in force, where a person lacks capacity to provide consent, the decision maker should where necessary make a best interest decision under the MCA regarding the care and treatment that needs to be provided.

In many cases it will be sufficient to make a best interest decision in order to provide the necessary care and treatment and put in place the necessary arrangements, for a person who lacks the relevant mental capacity to consent to the arrangements during this emergency period.

The guidance can be found by accessing the link below:

www.gov.uk/government/publications/coronavirus-covid-19-looking-after-people-who-lack-mental-capacity

The following guidance issued on behalf of Warwickshire County Council adheres to the above detailed Department of Health Guidance.

Providers who are working according to the principles of the MCA and Code of Practice continue to adhere to and protect an individual's Human Rights under the European Court of the Human Rights Act 2003 .

General points

Most/all care homes and many hospital wards are likely to be implementing additional restrictions during this time. Many of these do **not** relate to deprivation of liberty due to unsoundness of mind but rather relate to preventing the spread of infectious diseases. We await clear guidance on the position for those who need to be isolated/restricted on this basis and how to protect their article 5 rights beyond the protection offered by DoLS.

Schedule A1 Mental Capacity Act describes how a best interests assessment is carried out.

The assessor must consult the managing authority of the relevant hospital or care home.

The assessor must have regard to all of the following—

- (a) the conclusions of the mental health
- (b) any relevant needs assessment;
- (c) any relevant care plan.

There is no requirement for face to face assessment or even for consultation with P.

This is much more difficult with capacity and mental health assessments; hence the following measures seek pragmatic ways to provide such assessments.

Appeal to the Court of Protection is still available for people once an authorisation is issued, this is not available without an authorisation in force.

Best Interest Assessors will no longer complete routine visits to care homes and hospitals to complete assessments.

Upon seeking an authorisation we request that each Managing Authority provide further details of continuing deprivations of liberty, to include the types of restrictions, intensity and duration of such, along with details of challenges and/or objections to these.

We request that as much detail as possible to be reflected within the Form 1, to include all aspects of risk (such as challenging behaviour etc) as this will enable us to make the safe decisions in supporting desk top activity on critical areas of work.

In light of the provision of such additional information a decision will be made regarding the absolute necessity for a face to face assessment.

Whilst routine visits and face to face assessments will not be completed during this time should a Managing Authority feel the assessment is of an urgent nature assessments and reviews will be conducted via remote techniques such as telephone and video calls and views should be sought from those who are concerned with the persons welfare.

Acute Trust Managing Authorities are advised to only contact the DoLS Service upon expiry of the urgent authorisation, if restrictions are of an intense nature. The justification for this proposal is that in most circumstances patients have either been discharged or have regained capacity therefore rendering the assessment redundant.

The Dols service will continue to screen all referrals received from all Managing Authorities, we continue to utilise the ADASS screening tool to determine priority and will ensure additional screening and consideration of assessment as detailed above.

Face to face assessment will only be considered when it is determined as being “absolutely necessary”.

Best Interest Assessors will be conducting desktop review assessments for all renewal cases, relying on previous and equivalent assessments and we will continue to process these authorisations as business as usual.

During this challenging time a pragmatic approach must be taken to ensure vulnerable people receive appropriate legal protection.

It must be noted that these measures will ensure some degree of business contuuity but Public Health measures may make it impossible to complete many of the requests for DoLS Authorisations.

Form 1s – new applications. ONLY IN VERY EXPECTIONAL CIRCUMSTANCES.

Screen as usual for priority

Urgent cases

1. If the situation is urgent DoLS Operations Manager to consider whether a visit is possible or even an option. Immediate management plans are limit and avoid wherever possible visits to care homes and hospital to ensure safety of staff and vulnerable residents/patients.
2. If it is an absolute necessity, we would request the s12 doctor to visit and complete MHA and MCA. This limits the number of professionals visiting and the BIA will complete the rest of the assessments by phone interviews.
3. If significant restriction or objection is indicated, the BIA may need to visit to assess further; however, in such cases it is preferable to consider shorter authorisation periods with a reassessment planned later, or a longer authorisation period but with a review planned e.g. within 2-3 months.

If no visit is possible

1. Can the MHA be completed from existing notes?
2. Is there a capacity assessment for the same or similar decision with adequate evidence to rely on, which can be utilised by the BIA?

3. Is the person nonverbal rendering it likely that capacity is lacking on this basis alone?
4. Is there evidence from other sources and previous assessments rendering it likely that capacity is lacking for most decisions other than day to day. Can this evidence be used?
5. If a capacity assessment can be completed, then the remaining assessments to be completed by phone

Non-Urgent Form 1s

1. Screen for existing evidence.
2. Is communication nil and has capacity previously been assessed on more than one occasion with a lack of capacity evidenced through minimal to no communication.
3. Can you use this evidence to complete a valid capacity assessment, in conjunction with the social worker or person who knows P well?
4. There may be a recent capacity assessment e.g. for admission to care home but completed by social worker. Can the BIA verify details and use this as evidence for their own capacity assessment making it clear it is drawn from evidence from others due to not being able to visit.
5. If so, then proceed to do Best Interests by phone and speaking to relatives.
6. BIAs/Admin should record which care homes are preventing access and update their assessments with details of additional restrictions such as lack of access, visitor restrictions etc
7. BIAs can still commence new assessments by phone to care homes and families, identify specific restrictions and any particular issues, and complete as far as possible. These can be finalised with capacity assessments once visits are allowed again. In this way partial assessments can be completed in bulk by care home. To be finalised later.

Form 2s -Renewals.

TO BE THE MAIN FOCUS OF WORK ACTIVITY.

1. Screen for all up and coming renewals with capacity assessments in date
2. Use these along with MHA completed from previous assessment and do Best Interests by phone
3. Where visits are still allowed/advised s12 doctors to be required to complete mental capacity assessments, as well as MHA
4. Recently expired capacity assessments where the BIA confirms with the care home and the RPR that there is no change, could be used by the BIA repeating the information and updating with their phone call to verify nothing has changed. Don't forget there will be no time limit of use of assessments under LPS
5. In renewal cases where there has been some significant change, such as increase in dependency/restrictions, BIAs can still complete renewal assessments by phone, but if there is significant new information complete a Form 3 explaining in the recording the circumstances which prevented a visit.
6. If there is objection – either new or more markedly than previously - then BIAs may need to highlight the strength of objection and consider advising on an

application to the Court of Protection at the earliest opportunity. BIAs must still apply the guidance on where an appeal is required.

Renewals where the Form 2 is not received in time.

Referrals placed in Medium 1 priority awaiting assessment.

TO BE THE MAIN FOCUS OF WORK ACTIVITY AS WITH FORM 2'S RENEWALS ABOVE.

1. A short window could be allowed whereby an expired authorisation can still be treated as a renewal even though they have expired. Perhaps consider whether Form 9 is appropriate in these circumstances.
2. Generating Form 2s on time is useful for everyone in the current situation. Where a Form 2 is not received the BIA can still commence the renewal and ask for the Form two when they phone to begin assessing.

Summary

During this challenging time a pragmatic approach must be taken to ensure vulnerable people receive appropriate legal protection.

Using a combination of the above measures will ensure the Council continues to meet its legal requirements.

This management plan is to be reviewed regularly and dependent upon Government advice may change.