

Information Bulletin for General Practitioner Practices

Mental Capacity Act & Deprivation of Liberty Safeguards

The Mental Capacity Act (MCA) became law in 2005. This includes the Deprivation of Liberty Safeguards (DoLS).

When MCA assessment identifies *it is reasonable* to believe a person lacks capacity and the care or treatment required in their best interest might deprive them of their liberty, authorisation must be requested.

This is completed by the provider of the care and treatment: this could be a care home or persons in supported living which is depriving the person of their liberty. The application is made to the Local Authority. They will undertake an assessment to determine if the deprivation of liberty is required and proportionate to keep the person safe.

If the deprivation is authorised the person is classed as being in *safe detention*. Therefore if/when they die the coroner must be informed and they will review the deprivation of liberty that was in place and additional information **before** issuing the death certificate. Within the **MCA Act in 2005** was incorporated reference to abide in accordance with section 8 of the Coroners Act: Common law to inform the Coroner of any death that has occurred whilst a person is subject to the Deprivation of Liberty Safeguards. Whilst local authorities had previously informed: the Coroner of a death whilst under the Deprivation of Liberty Safeguards, the new act formalises this as a legal duty. Care home providers therefore have a duty to notify the Coroner of any death occurring whilst the deceased was subject to detention under the Deprivation of Liberty Safeguards. If a GP is requested to confirm death they could not issue the death certificate and have to inform the Coroner.

In 2005 there was no list of what was classed as a DoLS. The guidance indicated it had to be a person in a hospital or care home receiving 24/7 care. It focused on providing care/ treatment the person was declining to receive due to them lacking capacity to consent, or preventing them from doing something they wanted to do.

Cheshire West and Chester local authority were challenged in the High Court on a DoLS authorisation that was granted on *P*. In March 2014 A Supreme Court Judgment was passed ruling that the deprivation was unlawful. This was a land mark case and has led to significant changes to whom and when deprivation of liberty authorisations must be made.

Over the past months an "**acid test**" term has been developed to indicate the three points to consider when to apply for DoLS.

- 1 - The person lacks capacity AND
- 2 - The person is not free to leave AND
- 3 - The person is subject to continuous supervision

The ruling came on the back of the House of Lords review confirming DoLS was not fit for purpose. Initially it was thought the Law Commission would review this law in due course but recent information indicates the review of the law will not commence until 2016 at the earliest. Which means the current ruling still stands.

This is a national concern and the implications are far reaching, in resources, workload and financial costs. One of the main concerns with the applicants and the authorities is to ensure the most

vulnerable cases are prioritised and several test cases continue to be taken through the Court of Protection.

Points to note:

- **GP Practices need to ensure that Health Professionals are aware when a person has a DoLS in place** –much like when a person has a pacemaker
- It is the responsibility of the care provider/decision maker to assess the person's capacity and if it is reasonable to believe they lack capacity the acid test is applied. The decision maker might be the provider or health professional or both
- It is the responsibility of the care homes or supportive living providers to apply for the authorisation for the DoLS
- **If the DoLS is authorised and the person dies the GP must inform the coroner and are unable to issue the death certificate**
- The care home or supportive living provider must also inform the coroner
- **The coroner's office will request information relating to the persons health and well-being before their death and if their death was expected**
- **The coroner will issue the death certificate or refer for post mortem**
- The DoLS does not impact on any decisions that are made in the persons best interests relating to resuscitation. However if the person has no friends or family an IMCA (Independent Mental Capacity Advocate) should be involved for people who lack capacity and represent their views if there is no one else to fulfil this role
- **You will need to check** - your own policies and procedures relating to your DNAR process
- **You will need to check** - your policies if you have Nurse Practitioners who verify death as the person is classed as being in detention
- **Health professionals have a responsibility to** keep updated on constant changes relating to MCA & DoLS

The information in this bulletin has been undertaken with consultation between NHS South & East & West Cheshire Clinical Commissioning Groups, Cheshire East and Cheshire West and Chester Local Authority leads for MCA & DoLS, NHS England.

For further information

Department of Health Guidance March 2014 - [click](#)

Department of Health Easy read DoLS - [click](#)

Cheshire West and Chester Council

<http://www.cheshirewestandchester.gov.uk/default.aspx?page=17279>

Cheshire East Council

<http://cheshire.searchimprove.com/search.aspx?pckid=1044181725&aid=9349&pt=6018936&sw=deprivation+of+liberty&x=30&y=12>

Wirral Borough Council

<http://www.wirral.gov.uk/my-services/social-care-and-health/im-worried-about-someone/policies-procedures-guidance-protocols>

Warrington Borough Council

http://www.warrington.gov.uk/downloads/200515/deprivation_of_liberty_safeguards