

# Staff INFORMATION

## Briefing Sheet: Mental Capacity Act 2005 (MCA) and Deprivation of Liberty Safeguards (DOLS)

This leaflet is intended to be a basic guide to the Mental Capacity Act 2005. **It should be read and understood by all Trust staff, including those who work in a community setting.**

Mental capacity is the ability to make a decision. The Mental Capacity Act 2005 (MCA) sets out how decisions are made for people without mental capacity, i.e. people who cannot make decisions for themselves.

### There are 5 key principles of the MCA:

1. A person has capacity, unless the tests described below show that they don't.
2. You have to help a person to make a decision as much as you reasonably can (for example, by allowing them more time to think or by changing your method of communication).
3. If a person has the capacity to make a particular decision, they have the right to make a decision that others might see as unwise.
4. A person's best interests come first. Any decision must be as close as possible to what they would have wanted for themselves.
5. If a decision has to be made for someone else, it should be the "least restrictive action" i.e. the least disturbing and least dangerous option for them.

### How do you know whether someone has capacity?

Step 1: does the person have an impairment or disturbance which affects their mind or brain?

If no, they have capacity. If yes: go to step 2

Step 2: does that impairment or disturbance mean that the person is unable to make a decision?

In deciding this you need to consider 4 questions:

- i. Do they understand the relevant information to make the decision at the time it needs to be made?
- ii. Can they remember the information when questioned?
- iii. Can they use the information you have provided to consider the question?
- iv. Can they communicate their decision (by talking, sign language or any other method)?

If the answer is yes to these 4 questions then the person has capacity. If you have answered no to any of the 4 questions then the person does not have capacity.

### Who decides whether a patient has capacity?

Any professional can test capacity. It should be the person most directly involved with the issue at hand. For important health decisions, this should be the doctor.

### Things to look out for:

- When deciding what a patient would want, it is important to discuss this with the patient's **family** who (normally) will be the best source of information about the patient.
- If someone has no family or friends then you must appoint an Independent Mental Capacity Advocate (**IMCA**) to help with decision making especially in situations around serious medical treatment, accommodation in hospital/care home, Deprivation of Liberty Safeguard cases, care reviews, safeguarding cases.
- If a patient has a **Lasting Power of Attorney (LPA)**, they have appointed someone to make decisions on their behalf. You should ask to see the LPA documentation and discuss with your line manager about how future decisions should be made.
- If a patient has made an **Advance Decision** then they have already made plans as to how they want to be treated when they can no longer make decisions themselves. It will be important to take this Advance Decision into account and you should discuss with your line manager about how future decisions should be made.
- [The Court of Protection](#) oversees everything to do with the MCA.

### What are the Deprivation of Liberty Safeguards?

The Deprivation of Liberty Safeguards (DoLS) is a scheme put in place with the Local Authority to ensure that people who are deprived of their liberty are monitored more closely to ensure they are getting the right care for their needs.

### How to decide whether a person is deprived of their liberty?

The test to apply to decide whether someone is deprived of their liberty is known as the "acid test".

There are 2 questions:

#### Question 1: Is the person subject to **continuous supervision** and/or **control**?

If no: no deprivation of liberty. If yes: continue to question 2

Question 2: Is the person free to leave? (The person may not be asking to leave or making any attempt to leave but the question to ask is if they did, would they be allowed to leave?)

If no: the person is deprived of their liberty. If yes: no deprivation of liberty.

Therefore, if a person is subject to continuous supervision and/or control and not free to leave they are being deprived of their liberty.

### What do you do if a patient is deprived of their liberty?

The Deprivation of Liberty Safeguards are not the only way to authorise a deprivation of liberty.

There are a number of options:

- 1) Detention under the Mental Health Act 1983 – this will not be appropriate in all cases
- 2) Deprivation of Liberty Safeguards – if the patient is in a care home or hospital then you should apply to the Local Authority for an authorisation under the Deprivation of Liberty Safeguards (DOLS)
- 3) An order from the Court of Protection

If a patient meets the acid test set out above and is deprived of their liberty then one of the above must be in place to ensure that the treatment and care is within the law. If not then you need to raise this with your manager.

**Please note that this briefing sheet is not intended to provide exhaustive coverage of the law and its application. If you have any concerns or queries about the above or its application, do contact your manager or your local Mental Health Law Office.**