

Covid-19: DoLs, Mental Capacity and Best Interests



NHS

Key Messages:

- There are no statutory easements for DoLS or MCA during Covid-19
- Best interests decision making is a **process** and does not need a formal face to face meeting during Covid-19
- Remote assessments may not work for everyone – involve others and be creative
- We still need to work to the least restrictive option

Challenges:

- Working with people who have communication difficulties
- Digital exclusion
- Non-concordance with lockdown or self-isolation
- Remote assessments and consultations

It is unacceptable for cohort decisions to be made – advance care planning, deprivations of liberty or best interests decisions cannot be applied in a blanket fashion.

Implementing in Practice



Need to understand in the context of social distancing, working from home and stay at home rules – record why a face to face assessment is not possible.

It may be beneficial to have someone with the person to ensure that their voice is heard and they are supported – all care homes have been issued with tablets to facilitate video contacts and assessments, families may be able to support with the use of technology.

A draft assessment script, with the information relating to the decision being considered can be sent to the person, their advocate, carer or care staff prior to the consultation. This means that the person and those who are supporting them have time to discuss and understand what is being asked prior to a phone or video consultation.

Seek corroborative evidence and information from other professionals and family involved in the person's life.

Life saving treatment in a hospital or care home setting, including that for Covid-19, is not regarded as a deprivation of liberty but can be provided in the persons best interests.

Where individuals are deemed to have capacity, yet choose not to comply with lockdown therefore putting themselves and others at risk, emergency public health powers should be considered (Covid Act)

Questions to consider:

- What is the purpose of the assessment/decision?
- What is actually available?
- Who should I involve?
- What support is needed?