

Mental Capacity Act 2005 Implementation Policy

Policy information

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Summary of document:

This document sets out the way in which the Mental Capacity Act 2005 (MCA) will be promoted, supported, and integrated into everyday clinical practice within Hywel Dda University Health Board.

Scope:

All employees of the Health Board should be aware of the Policy and appropriately contribute to its implementation.

To be read in conjunction with:

[141 – Independent Mental Capacity Advocacy Service Policy](#) (opens in a new tab)

[811 – Mental Capacity Act Practice Guidance](#) (opens in a new tab)

[419 – Advance decision to refuse treatment policy](#) (opens in a new tab)

[008 – Consent to examination or treatment policy](#) (opens in a new tab)

[163 – Deprivation of liberty policy](#) (opens in a new tab)

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Mental Capacity & Consent Group 29/08/2024

Executive Director job title:

Deputy Chief Executive & Director of Operations

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Mental Capacity Act, Deprivation of Liberty Safeguards, Best Interests

Glossary of terms

MCA: Mental Capacity Act 2005

DoLS: Deprivation of Liberty Safeguards

P: patient

RPR: Relevant Person's Representative

IMCA: Independent Mental Capacity Advocate

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SCOPE

All employees of the Hywel Dda University Health Board (Health Board) should be aware of the Policy and appropriately contribute to its implementation.

AIM

The aim of this document is to:

- Outline an organisational structure and a strategic direction for the Health Board in relation to implementation of its statutory responsibilities under the Mental Capacity Act 2005 (MCA).

OBJECTIVES

The aim of this document will be achieved by the following objectives:

- The Policy describes roles and responsibilities at executive and operational levels for the MCA, including the Deprivation of Liberty Safeguards
- Outlines the associated committee structures and reporting arrangements
- Describes the approach to staff training
- Sets out implementation objectives to guide the work of the relevant operational staff in supporting MCA awareness and concordance

INTRODUCTION

What is mental capacity?

Mental capacity is the ability to make your own decisions. In the healthcare context every adult with mental capacity has the right to decide whether or not to accept treatment, even if a refusal may risk permanent injury to health or even lead to premature death. If somebody lacks mental capacity they should not be deprived of treatment that they need just because they cannot make the decision.

Introduction of the Mental Capacity Act 2005

The Mental Capacity Act 2005 came into force on 1st October 2007. It provides a statutory framework to empower and protect vulnerable people who may not be able to make their own decisions. The Act applies to everyone and is not confined to people with mental health difficulties. The MCA clarifies who can make decisions, in which situations and how they should go about this. It enables people to plan ahead for a time when they may lack capacity. Where a person does lack the necessary capacity, the MCA covers major decisions about property, financial affairs, healthcare treatment and accommodation, as well as everyday decisions. The MCA applies to the whole adult population aged 16 and over.

Since 1st April 2009 the MCA has been supplemented by the Deprivation of Liberty Safeguards (DoLS). These safeguards protect the rights of people who lack the capacity to consent to treatment or care in a hospital or a care home, where the care might involve depriving the person of their liberty. There is a supplementary Code of Practice for the Deprivation of Liberty Safeguards which explains how to identify when a person might be being deprived of their liberty, how deprivations might be avoided and, where necessary and in a person's best interests, how a deprivation of liberty can be authorised.

STRUCTURE FOR THE IMPLEMENTATION OF THE MENTAL CAPACITY ACT

Roles and responsibilities

Executive arrangements

The Chief Executive and Board hold ultimate responsibility for the implementation of the Mental Capacity Act within the Health Board. Executive responsibility for the MCA as a whole is delegated to

the Director of Operations. Responsibility for the Deprivation of Liberty Safeguards sits with the Director of Primary Care, Community and Long Term Care. Main responsibilities include:

- Acting to promote good practice across the Health Board on MCA/DoLS matters.
- Ensuring systems and processes are in place to enable the Health Board and all relevant staff to meet the statutory requirements of the MCA and DoLS.
- Providing regular reports to the Board via the Governance Committee structure on the implementation of the MCA/DoLS.
- Responding to external reviews of progress in relation to implementation of, and compliance with the MCA/DoLS.

The Director of Operations Chairs the Mental Capacity and Consent Group.

Consent and Mental Capacity Department

In order to support implementation of the Mental Capacity Act within the Health Board, the Health Board established the Consent and Mental Capacity Department. The department is managed by the Head of Consent and Mental Capacity, to whom strategic and operational responsibility for the MCA is delegated. A small team of Mental Capacity Advanced Practitioners work across the health board to support implementation of the MCA in clinical practice, and promote compliance with the law in our care of patients who may lack decision-making capacity.

The department provides direct advice and practical support to health care professionals and service managers. This includes supporting, or in complex cases, undertaking capacity assessments; assisting with best interests decisions and, in complex or finely balanced cases, chairing best interests meetings; providing support and advice where an application to the Court of Protection is a consideration; assisting with the investigation of concerns; raising awareness of the Act and delivering training in all aspects of the MCA.

In addition, the department provides assurance to the Board that appropriate governance arrangements are in place, including policies and procedures to support implementation of the MCA, information resources and systems to monitor compliance with MCA requirements.

The department has an excellent reputation across Wales, and actively contributes its expertise to national developments relating to the MCA and shares good practice.

For a visual representation of the above structure please see [Appendix 1](#).

Deprivation of Liberty Safeguards

The DoLS scheme requires a 'Managing Authority' to seek authorisation from a 'Supervisory Body' in order to lawfully deprive someone of their liberty.

Managing Authority

The Managing Authority is made up of the hospitals within the Health Board. If those caring for the patient (P) believe that they need to be deprived of their liberty in order to receive necessary care or treatment, the ward or department applies to the Supervisory Body for permission to do so.

Supervisory Body

The Supervisory Body has statutory responsibility for determining whether it is lawful to deprive P of their liberty in order to provide care and treatment. All six of the qualifying requirements in the statutory

assessments¹ must be positive for a standard authorisation to be granted. The work of the Supervisory Body is undertaken by the DoLS Team which is made up of the DoLS Coordinator and a small team of Best Interests Assessors; Medical Assessors; and identified colleagues in the Long Term Care Team who act as the DoLS Signatories.

The assessments are arranged by the DoLS Coordinator and undertaken by a Best Interests Assessor and a Medical Assessor, although suitable equivalent assessments can be utilised. A DoLS Signatory scrutinises the assessments and decides whether to authorise the deprivation of liberty via a Standard Authorisation.

The DoLS Team are also responsible for ensuring that a Relevant Person's Representative (RPR) is appointed to maintain contact with P, to represent them and give support in all matters relating to the DoLS. An Independent Mental Capacity Advocate (IMCA) may also be instructed.

When a standard authorisation is given, this provides the Managing Authority with lawful authority to deprive P of their liberty. The Supervisory Body may impose particular conditions with which the Managing Authority must comply. The DoLS Team coordinates the process for reviews, renewals and appeals in relation to DoLS.

In addition, the DoLS Team provides assurance to the Board that appropriate governance arrangements are in place, including policies and procedures to support implementation of the DoLS scheme; information resources for patients, carers and staff; systems to monitor compliance with DoLS requirements and report to HIW; and relationships with the Welsh Government and health and social care colleagues. They actively raise awareness of the DoLS scheme and deliver training to ensure compliance with DoLS processes.

The Deprivation of Liberty Safeguards scheme only includes adults of eighteen years of age or older. The DoL Safeguards are also only available to authorise deprivations of liberty that occur in a registered hospital or care home and people can be deprived of their liberty in other settings, such as a supported tenancy or even, in certain circumstances, in their own home. Where the Health Board is commissioning care for people in settings other than a registered hospital or care home where there is or may be a deprivation of liberty, an application to the Court of Protection may be required and advice should be sought from the Health Board's Legal Services Department

A person with parental authority may not be able to consent to a deprivation of a younger person's liberty, and will not be able to do so in respect of young people aged 16 and 17 who are within the scope of the Mental Capacity Act. Neither a Re X application nor an authorisation under the DOLS scheme is appropriate for those under the age of 18 years, and legal advice should be sought from the Health Board's legal team as to what application ought to be made to ensure the correct legal framework is in place to authorise the deprivation of liberty. This applies to both community and in patient settings.

¹ **Age:** P must have reached age 18 / **Best interests:** The deprivation of liberty must be in P's best interests, necessary to prevent harm to P, and a proportionate response to the likelihood and seriousness of that harm / **Eligibility:** P must not be detained, or eligible to be detained under the Mental Health Act 1983 / **Mental capacity:** P must lack capacity to decide if they should be accommodated in a particular hospital or care home for the purpose of being given care or treatment / **Mental health:** P must have a mental disorder (i.e. any disorder or disability of the mind, apart from dependence on alcohol or drugs.) / **No refusals:** There must be no alternative decision making authority that would prevent a standard deprivation of liberty authorisation (i.e. refusal via: an advance decision to refuse the treatment for which the deprivation is intended; a Deputy of the Court of Protection; or a Health and Welfare Lasting Power of Attorney).

COMMITTEE STRUCTURES AND REPORTING ARRANGEMENTS

Issues in relation to the Mental Capacity Act and Deprivation of Liberty Safeguards are dealt with via the Mental Capacity Act and Consent Group which meets quarterly. The Group has a broad membership which includes representatives of the key professions, and service areas, the local authorities and the IMCA service.

The Group is chaired by the Director of Operations and reports to the Operational Quality, Safety and Experience Sub-Committee.

CURRENT IMPLEMENTATION PRIORITIES

Key Objectives

The Health Board's implementation priorities are designed to ensure progress against the following key objectives:

- Clinical staff will recognise when it is appropriate to assess mental capacity and will be able to conduct and properly evidence such assessments in less complex cases.
- Best interests decision-making will be recorded, meet the statutory requirements and demonstrate an appropriate balancing of factors relating to physical safety alongside consideration of the person's wishes, feelings and psychological well-being.
- Good practice in relation to the MCA will be achieved without undue delays in decision-making and patient flow.
- The organisation will make ongoing efforts to improve awareness of the DoLS scheme, ensuring applications are appropriately prioritised for assessment and authorisation.

Training and awareness raising

Mental Capacity Act

Taught MCA training is an essential 'one-off' foundation for healthcare professionals. Both advertised and bespoke sessions of this standard training are available, with the former being advertised by the People Development Department. Attendance at this training is registered on ESR and the numbers of staff trained are reported to the Mental Capacity and Consent Group.

All-Wales NHS Level 1 and 2 e-learning courses are mandatory for certain staff within the health board. They are available on ESR and provide foundation training for non-registered staff, and as update training for professionally registered staff.

The MCA Team assisted in the development of a Masters level course on Assessing Decision-Making Capacity with Swansea University. The course provides more in-depth training, and the health board supports a number of applicants for each cohort of the course. Professionals who are well-placed to complete capacity assessments as part of their clinical roles are encouraged to apply for the course by the Consent and Mental Capacity Department, who 'sponsor' applications from suitable candidates, as well as providing mentoring support during their studies. The structure for MCA training is outlined in Appendix 2.

Deprivation of Liberty Safeguards

Facilitated by the Learning and Development Department, the DoLS team provide twice monthly one hour training via MS Teams available to all staff, focussing on when and how to make a DoLS referral. The aim is to ensure that all those who require the protection of DoLS are afforded it and that staff in

the Managing Authority understand their roles and duties under DoLS. In addition to the MS Teams sessions the DoLS team can provide bespoke training on request.

Practical, 'hands on' mentoring in MCA and DoLS implementation

The MCA and DoLS Teams will provide active support to the clinical environments within the organisation, working alongside and mentoring clinical staff in implementation of the MCA and DoLS. The range of mentoring activities focuses on the objectives of improvements in capacity assessments, best interests decision-making, reducing delays in decision-making and patient flow as well as promoting appropriate use of the DoLS scheme. The ongoing aim is to gradually improve the confidence and competence of clinical staff in these areas, but there will be an ongoing requirement for specialist provision in more complex cases.

Information and resources

Policies

There is a suite of policies directly relevant to the Mental Capacity Act and Deprivation of Liberty Safeguards which are regularly reviewed and updated and can be found on the Clinical Policies, Procedures and Guidelines section of the Health Board intranet pages.

MCA and DoLS web-pages

The MCA and DoLS intranet pages are a valuable source of information and resources available to all health board staff.

Monitoring and reporting

The findings and recommendations arising from periodic audits are reported to the MCA and Consent Group, where decisions are made as to the way forward.

The MCA and DoLS Teams collate a briefing report for each meeting of the MCA and Consent Group highlighting any clinical practice concerns which have arisen in the course of their work. The Group considers any remedial actions which may be required if trends or patterns of poor practice emerge. Similarly, where good practice has been noted the Group will advise on how best to communicate and share with others. A report by the Independent Mental Capacity Advocacy provider is similarly received by the Group.

Any claims and complaints which have a significant MCA or DoLS component are brought to the MCA and Consent Group for consideration. Practice issues arising from Court of Protection cases are highlighted by the Legal Services Department.

References

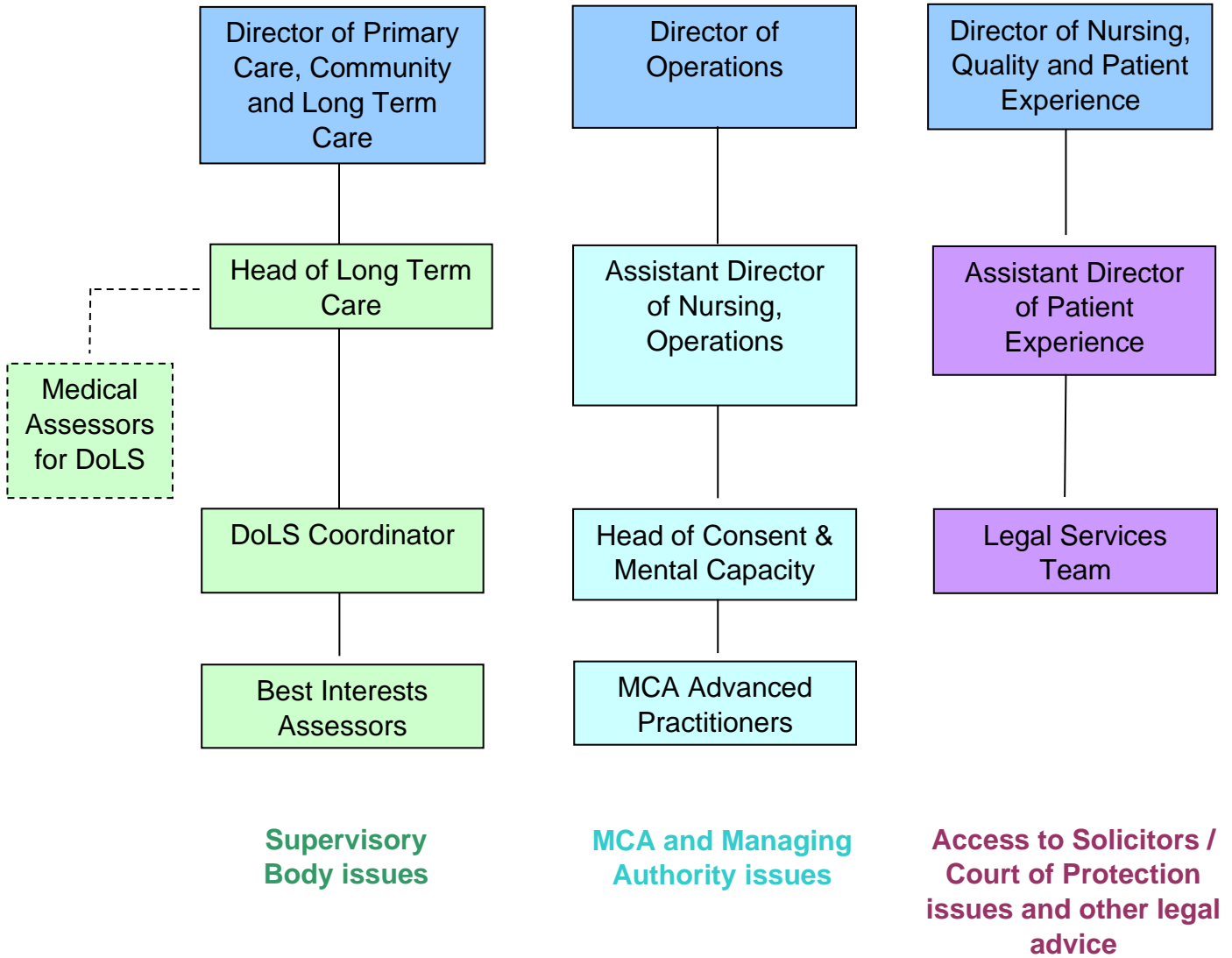
Statutes:

- Mental Capacity Act 2005. Access via <http://www.legislation.gov.uk/ukpga/2005/9/contents>.

Publications:

- Ministry of Justice (2008), '*Mental Capacity Act 2005 Deprivation of liberty safeguards, Code of Practice to supplement the main Mental Capacity Act 2005 Code of Practice*', London: The Stationary Office. Access is available [here](#)

Appendix 1: MCA/DoLS Organisational Structure



Appendix 2: MCA training structure

