

# Mental Capacity Act (2005) Subgroup

## The role of Best Interests Assessor

The Human Rights Act gives a person the right to liberty. For people living in a care home or hospital who are deprived of their liberty and who lack the mental capacity to decide where to reside, a Best Interests Assessor (BIA) supports the individual to ensure their right to liberty is upheld.

Case Law provides the 'acid test' for deprivation of liberty (DoL): when the person is not free to leave the setting and is under continuous supervision and control.

Upon receipt of a request for a Deprivation of Liberty Safeguards (DoLS) authorisation from a hospital or care home, The BIA in partnership with a Psychiatrist, establishes if the criteria are met for the person to be eligible for a DoLS. If the criteria are met, the BIA provides an evidence-based opinion, whether or not it is in the person's best interests to reside in the hospital or care home.

There are six elements within the DoLS assessment process, for a DoLS authorisation to be granted:

- The person must be 18 years of age or over
- The person must lack the capacity to decide where to reside to receive care and/or treatment
- The person must not be subject to another legal framework which prevents DoLS being applied, for example being detained under the Mental Health Act
- The person must not have an LPOA or Deputy or Advance decision which would conflict with DoLS
- The person must have an impairment of, or disturbance in the functioning of the mind or brain
- It must be in the person's best interests to reside in the hospital or care home.

If the BIA is satisfied that the criteria are met and that it is in the person's best interests to reside at the hospital or care home, the BIA makes a recommendation for a DoLS authorisation to be granted for a maximum of up to 12 months.

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## In this issue

The role of Best Interests Assessor  
| Page 01

Specialist Advocacy Service (IMCA, IMHA, Paid Representative & 1.2 Representative) Derbyshire Mind | Page 02

DoLS and the role of the Relevant Person Paid Representative | Page 03

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## Benefits and outcomes of DoLS:

- The BIA may conclude that the placement is in the person's best interests and recommend an authorisation is granted. When an authorisation is granted, the person concerned has an automatic right to support from a Representative/Advocate and can access the Court of Protection.
- Consultation with the person, people close to them, and professionals is central to the DoLS assessment process.
- The BIA may recommend that an authorisation is granted subject to certain conditions aimed at reducing the impact of the DoL. For example, the BIA may recommend that opportunities for increased social interaction should be explored to promote the person's wellbeing.
- The BIA may conclude that the person is not eligible for DoLS meaning a DoLS authorisation is not granted. The person concerned therefore, maintains their right to decide where they will reside and how they will be supported.
- The BIA may conclude that the placement is not in the person's best interests and recommend that alternative placements are explored.
- When an authorisation is granted, the individual has the right to make an application to the Court of Protection. If for example the person objects to the placement at any time during the authorisation the court process is available to ensure their legal rights are upheld.

Case study – As part of the DoLS assessment process, a young man was assessed as having the mental capacity to decide where to reside. In line with his wishes and with multi agency support, he returned home shortly before Christmas Day to celebrate the festivities with a relative.

## **Specialist Advocacy Service (IMCA, IMHA, Paid Representative & 1.2 Representative) Derbyshire Mind**

The Mental Capacity Act 2005 provides the right to Independent Mental Capacity Advocacy (IMCA). It creates a **legal duty** for decision makers to instruct an IMCA if the qualifying criteria are met.

An IMCA **must** be instructed and then consulted for people aged 16 and over who have been assessed as lacking **capacity** to make that specific decision and there are **no available, willing and appropriate** family or friends to consult.

Derbyshire Mind works with those who are in Derbyshire at the time the decision needs to be made. All advocates at Derbyshire Mind are trained IMCA's, IMHA, Paid Representatives and Representatives.

The decision maker is an individual within either the Local Authority or NHS who is responsible for making certain important decisions on behalf of someone who has been assessed as unable to make decisions themselves. Examples include Medical Consultant, Social Worker, G.P. or Care Manager.

## **Derbyshire Mind IMCA's consult over decisions about:**

- Serious medical treatments (SMT)
- Long term accommodation moves (LTAM)
- Continuing health care (CHC) reviews
- Reps for people in a community-based setting who have restrictions in place – approved by the Court of Protection for 12 months

## **The role of an IMCA:**

- Confirm that the person instructing them has the authority to do so,
- Interview or meet with the person in private, if possible,
- Act in accordance with the principles of the MCA 2005,
- Examine any relevant records that Section 35(6) of the Act gives them access to,
- Obtain the views of the professionals and paid workers,
- Obtain the views of anybody else who can give information about the wishes and feelings, beliefs or values of the person,
- Access any other information they think will be necessary,
- Find out what support a person who lacks capacity has had to help them make the specific decision
- Try to find out what the person's wishes, and feelings, beliefs and values would likely to be if the person had capacity,
- Find out what alternative options there are
- Consider getting a second medical opinion if appropriate
- Write a report on their findings for the Local Authority or NHS body.

Derbyshire Mind also support individuals under a DoLS where the person does not have anyone who can take the role of the person's representative. We are commissioned to provide a Paid Representative for people who are funded by Derbyshire Social Care both in Derbyshire and out of area. This role is separate from any IMCA role and is instructed by the supervisory body.

## **DoLS and the role of the Relevant Person Paid Representative**

### **The role of the Relevant Persons Paid Representative**

The role of a Relevant Person's Paid Representative (RPPR) is to maintain contact with the person and to represent and support them in all matters relating to the DoLS. This support must be completely independent from the providers of the services they are receiving.

RPPR's have been specially trained to represent and protect the human rights of those who lack capacity and who are being deprived of their liberty in care homes and hospitals. The team holds a wealth of expertise and knowledge surrounding the Mental Capacity Act and DoLS.

Anyone who has a DoLS, will have a RPPR appointed for the duration of the authorisation, where they do not have anyone appropriate to fulfil the role of an unpaid representative i.e., family member.

**What the RPPR will do:**

- Meet and interview the person (in private if possible). Try to establish their wishes and beliefs in relation to the DoLS.
- Assist the person to understand the implications of the authorisation and what it means for them.
- Find out other information which may be relevant to the DoLS by speaking to others involved in the persons care and support.
- Raise issues or concerns that the person has shared or that the RPPR may have established when visiting the person.
- If there are conditions attached to the DoLS, as an additional layer of safeguards for the person, the RPPR will ensure these are being adhered to.
- The RPPR will request a review to the local authority if they feel that certain conditions or requirements for the DoLS are no longer being met.
- The RPPR can also support the person to raise any objections they have to their current placement to the Court of Protection; this is called a Section 21a Court of Protection appeal.
- The RPPR will help with individual to seek legal advice and support them through the court process.
- The RPPR will produce regular reports to the Local Authority (DoLS Team) to evidence the work completed and raise any issues.