

# Adults Health and Wellbeing Mental Capacity Act & Deprivation of Liberty Safeguards Briefing



## PRACTICE UPDATE

**Significant preparation work was done across Tower Hamlets to ensure that when the Deprivation of Liberty (DOLS) element of the Mental Capacity Act (MCA) came into force, on 1 April 2009, systems were ready to facilitate the assessments for eligible people.**

DOLS was introduced to help keep vulnerable people, who lack mental capacity, safe. Where possible the human rights of people should be upheld, but where this is not possible in order to keep them safe, a rigorous assessment process will check whether such care or treatment is in their best interests.

Local & National, Care and Hospital Providers were contacted and guidance was provided on how they could identify suitable people for the necessary assessments.

They were informed where to refer such cases. This allowed them to review service users' care plans to allow them maximum choice and freedom in their daily care routines to prevent deprivation of liberty where at all possible and use less restrictive options.

Six care homes were visited and two mail shots done with information, albeit very few managing authorities convinced that their service users met the criteria.

APRIL – OCTOBER 2009

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## BEST INTEREST ASSESSORS

# 18

Individuals have completed the specialist training and are now considered to be Best Interest Assessors (BIAs).

# 9

BIAs contributed to the assessments required.

# 11

It was evident in 11 cases that there was no deprivation of liberty. Therefore a differentiation was made and the cases were placed in two categories and a shorter piece of work done on some of the cases.

# 14

In order to facilitate the strict timeframes for the assessments a BIA Rota has been established and 14 BIAs are participating. BIAs are on the Rota in pairs and will serve three consecutive days. Managers have been asked to support them to do this important work and relieve them from the services they usually cover. If TH DOLS receives one referral a week, it is estimated that every BIA will complete work on three cases per annum.



## CASE ACTIVITY

To date 21 DOLS requests were made for authorization. The breakdown is as follows:

<b>Total Care Home Cases</b>	<b>3</b>
<b>Care Home Authorisations</b>	<b>2</b>
<b>Total Health Cases</b>	<b>18</b>
<b>Health Cases Authorised</b>	<b>1</b>

Extended timeframes were given for assessments to be completed when the Safeguards were introduced in April.

Twenty-one days were allowed for urgent authorisations and 42 days for standard authorisations.

Now the DOLS process has to be conducted in seven calendar days in the case of urgent referrals and 21 for standard requests. It is therefore imperative that cases are allocated swiftly in order for the six assessments to commence as soon as possible.

Within the first few days of the DOLS process coming into effect, ten cases were referred from an older person's hospital ward and then a further five from an initial assessment unit where service users had similar needs. It soon became apparent that most of the service users were not being deprived of their liberty, but were being restricted and these needs were manageable within the provisions of the MCA 2005. A further two cases were referred from service users in hospitals outside of the local authority. One of these were authorised where the person's care was so restrictive that the effects accumulated to a deprivation of liberty. Another person was referred from an acute hospital where they were kept for care purposes until a more suitable place was found. An authorisation was issued for this person. This person later moved and a further authorisation was made for them.

# LEARNING & DEVELOPMENT OPPORTUNITIES

**There are many training opportunities for staff from the local authority and NHS to gain greater knowledge regarding the MCA and DOLS.**

Adults Health and Wellbeing have three different training courses available:

## **Advanced Mental Capacity Act / DOLS - 14th October 2009**

This is a one day training course aimed at very experienced staff on the implementation of the MCA and to know more about the Deprivation of Liberty Safeguards.

## **Mental Capacity Act (Refresher) - 9 November 2009**

This is a one day training course that might be relevant for some staff who have been implementing the Act but need an opportunity to focus on practice issues using case scenarios and take a closer look at how the Act needs to be used to safeguard people.

## **BIA Training (1 week: 14 -18 September)**

This course run by Middlesex University is suitable for social workers / care managers and health professionals who have sufficient experience at post qualifying level. These staff members have to be available to do approximately 3 DOLS assessments per annum.

If you want to take up any of these courses, please discuss it with your manager in the first instance and request an application form from: [liza.marchant@towerhamlets.gov.uk](mailto:liza.marchant@towerhamlets.gov.uk)

# LONDON DOLS GROUP

**Tower Hamlets participates in the London wide DOLS group of coordinators that meet every eight weeks. The group monitors developments in the implementation of the legislation and progress across the boroughs.**

The average number of DOLS authorisations stand at three per borough. Most boroughs have one authorisation, compared with four in Tower Hamlets. There was little correlation between actual referrals and requests received despite the scoping done with local care providers where higher numbers were anticipated.

Further guidance was also issued about the need for full Best Interest Assessments on all cases, even where there is no clear concern of deprivation of liberty mentioned in the referral.

The group noted a trend of many cases concerning individuals diagnosed with Korsakoff's Syndrome. London has also been responsible for a quarter of all referrals in the country and these figures are currently much lower than anticipated by the Department of Health.

## IMCA

In Tower Hamlets the Independent Mental Capacity Advocacy Service is provided by Advocacy Partners Limited. Advocacy Partners also hold an extended contract to act as Persons' Representatives where no one suitable can be identified for the liberty deprived person. Thus far an IMCA has been involved in one DOLS referral in the borough and provided us with a current report and historical information on the service user, which was useful in helping the BIA do a comprehensive assessment on the relevant person's best interests.

The DOLS service will inform and involve the relevant IMCA service for each referred service user. Only IMCAs local to the service user are used, in order to provide the best service to that person by being in close contact with them.

## MCA/DOLS LIN

The Local Implementation Network (LIN) is a multi-agency steering group that meets at least every quarter to discuss progress and local matters pertaining to the MCA and DOLS. This group facilitated the Tower Hamlets DOLS Policy and Procedure and leads on the borough wide implementation and practice. Currently, consideration is being given to whether a DOLS database should be purchased.

# BEST INTEREST ASSESSMENT FEATURE

## 1) Where do you usually work and what is your professional background?

I have worked in the Learning Disability Service in Tower Hamlets PCT since 2004. I am 19 years post qualified and have a special interest in mental health and learning disability. Prior to working in Tower Hamlets, I have held posts in a day service unit in Bexley and worked in a specialist challenging behaviour and mental health unit at the Bethlem Royal Hospital.

I am originally from Glasgow and began my student nurse training at Lennox Castle Hospital, which was at the time a large hospital for "the mentally handicapped". I had a short stay at a hospital in Jersey before returning to Scotland to work at the Royal Scottish National Hospital, which was another large institution, similar to Lennox Castle.

I undertook my Best Interest Assessment Training with Middlesex University in March 2009 and have been a Best Interests Assessor since then.

The Department of Health determined a set of regulations for Eligible Professionals that could become Best Interests Assessors (BIAs) providing they had the relevant experience and specialist training, they include:

- an approved mental health professional or
- a social worker registered with the General Social Care Council or
- a first level nurse, registered in Sub-Part 1 of the Nurses' Part of the Register maintained under article 5 of the Nursing and Midwifery Order 2001 or
- an occupational therapist registered in Part 6 of the register maintained under article 5 of the Health Professions Order 2001 or
- a chartered psychologist who is listed in the British Psychological Society's Register of Chartered Psychologists and who holds a relevant practising certificate issued by that Society

- is not suspended from the register or list relevant to the person's profession and
- has at least two years post registration experience in that profession

## 2) Why did you volunteer to be a Best Interest Assessor (BIA)?

I was interested in developing more theoretical knowledge of assessing and working with people who lack mental capacity.

As I work with people with a learning disability there are often complex situations where I have to support people who cannot make some decisions for themselves. I use different methods of communication to help obtain the service users' views.

This usually includes using Makaton which is a language programme consisting of a small core vocabulary of specially selected concepts and ideas and which is aimed at people with communication and language difficulties.

In addition I use pictures, photographs, diagrams and models specifically tailored to the service user's needs. I also consult with family members, carers and advocates.

I believe that I benefited from the training and that I am more equipped to identify what is in people's best interests. I check to see what opportunities the service users have to exercise choice and control of their circumstances.

When I carry out assessments I attend to issues of risk and look at what action providers are taking to minimise harm to service users.

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## 3) How much time have you spent on Best Interest Assessment work?

Given that we have many BIAs in Tower Hamlets I have only had the opportunity to do one assessment.

I had to reschedule some of my other tasks and had to travel to another borough to complete the assessments, as the person was located in a long stay hospital.

From start to finish, including travelling time, consulting with the parent, advocate, staff at the hospital, the Mental Health Assessor I spent about 21 hours to complete and write up the assessments.

As part of the process I was required to complete the Age Assessment, the Mental Capacity Assessment, Best Interest Assessment and the No Refusals Assessments.

#### **4) If you were to give any advice to practitioners working with people who lack capacity to make complex decisions, what would that be?**

You should never assume that people lack capacity, just because of their disability.

Use the two-stage test to help you assess their abilities and help them to participate as much as possible. Also make sure that key decisions are recorded, as this can be particularly

important if one is ever challenged on how conclusions were reached.

#### **5) How have you helped raise the awareness about the Mental Capacity Act in your service area?**

I recently spoke as a guest speaker at an Academic Day entitled: "Mental Capacity Act.. where are we now? " which was held at Barts Hospital.

The event was led by East London NHS Foundation Trust and organised by Dr Ian Hall, Lead Clinician, Services for People with Learning Disability and Dr Gerald O'Mahony, Lead Clinician, Mental Health Care of Older People.

The event was attended by about 100 people who represented mental health services, social services, learning disability services and other professions.

I reported on my experience of being a BIA assessor and undertaking my assessment. The content raised awareness and debate and feedback was positive.

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## **LESSONS LEARNED**

The DOLS Process is adding value to the care planning process and allows better support to service users to make decisions.

This offers people maximum independence and helps develop closer relationships between medical providers, care providers and commissioners that purchase the services. The DOLS process highlights practice and brings forth greater understanding of how complex needs are and should be managed successfully. We have come to realize that there is much awareness-raising still needed to help practitioners make full use of the MCA and how it allows professionals to restrict, under their duty of care. This only, if the intervention is a proportionate response to risk and if it will protect people from harm.

In all cases of DOLS it is essential that it is first established that the service user lacks capacity with regards to the particular issue at hand. Also that the Best Interest Assessment may be the most suitable point to start the DOLS



given that there may be no issue of deprivation and that this needs to be determined from the outset, in order to decide if it is necessary to continue with the process. We learned that within the Care Management Process of Adults Health and Wellbeing, information should be included to the potential provider regarding an ongoing DOLS assessment or issue. In turn the provider should ask whether service users are subject to DOLS when they assess them for the suitability of their service. Recording and communication with relevant professionals are when DOLS matters apply to a service user's care routine and should be placed on the care plan and other relevant documents. The DOLS

service will in turn add documents to TRIM once the assessments have been completed. Further guidance is also available in the DOLS Adults Health and Wellbeing User Guide.

There are six assessments that need to be met before a DOLS authorisation can be granted. It is important to establish at the beginning whether the person lacks capacity to make a decision on an issue.

Secondly before launching into all the assessments the best interest assessment maybe the best place to start. The best Interest assessment will look to the managing authority as to whether the deprivation of liberty is proportionate, less restrictive and in the best interests of the person. And we have experience that a large proportion of applications are regarding issues that would be better dealt with under the MCA. If there is no issue of deprivation identified then the other assessments are not required and the assessment ends at this point. Advice is given to the managing authority regarding assessing the situation under the MCA.

Managing authorities need to consider when receiving applications whether there is a potential deprivation of liberty that would require a request for standard authorisation prior to admission. They would also need to confirm whether there is currently an Authorisation for the deprivation already in place for their current place of residence that would require assessment prior to the move to their new residence. Clear recording and communication of the service users status under DOLS is important to ensure that it is not overlooked in the transfer of care. It is important that procedure is adhered to as this is a legal process. Further guidance is also available from the DOLS Adult Health and Wellbeing Guide, which can be found on the web.



## TH DOLS CONTACT DETAILS

**For advice, guidance and to make referrals you can contact the Tower Hamlets DOLS Service. This is joint initiative between Health Services and Social Care, where all assessments are coordinated from a central point.**

For more information please contact:

### **Tower Hamlets DOLS Service**

Room 1.6, Gladstone Place, 1 Ewart Place, Bow, London E3 5EQ

T: 020 7364 1643

F: 020 7364 7790

E: [DOLS@towerhamlets.gov.uk](mailto:DOLS@towerhamlets.gov.uk)

or [Liana.Kotze@towerhamlets.gov.uk](mailto:Liana.Kotze@towerhamlets.gov.uk)

W: [www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk) for more information search DOLS

Liana Kotze is the DOLS Lead and Ian Williamson supports this post as the Social Care Practice Manager. Please do not hesitate to contact Liana or Ian with regards to any DOLS related matter you may like to discuss.

To download referral forms please see: [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_089772](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_089772). Completed forms should be forwarded to the Tower Hamlets DOLS Service by post or fax.



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