

Official:

14th April 2020



Dear Provider,

DEPRIVATION OF LIBERTY SAFEGUARDS (DOLS) DURING THIS TIME

We are writing to you to advise of the [recent Emergency MCA/DoLS Guidance](#) released by Government which outlines the expectations around MCA/DoLS arrangements during the coronavirus pandemic. This guidance remains under review - so changes may be made in the future.

The fundamental rights of detained persons during the pandemic must be fully respected and any restrictive measure taken in relation to persons deprived of their liberty to prevent the spread of COVID-19 should have a legal basis and be necessary, proportionate, respectful of human dignity and restricted in duration.

Providers must ensure that they maintain people's rights to adequate personal hygiene (including access to hot water and soap), right of daily access to the open air (of at least one hour) and for cases of isolation or placement in quarantine due to infection - the person concerned should be provided with meaningful human contact every day.

We recognise that you have had to take swift action to protect residents and this has meant restrictions on contact with the outside world, including visits. We would request that you start (if you have not already) to proactively consider how this can be mitigated such as increasing residents' access to alternative means of communication (such as telephone, skype, WhatsApp video calling, zoom, facetime).

Due to the COVID-19 situation and in recognition of the increased pressures on your services, **Lambeth have, at this time, in line with the guidance, suspended all DoLS visits.** Renewal DoLS assessments will continue via the 'desktop' method for those who have had a previous authorisation in the same location. You will be contacted by Best Interests Assessors by telephone/email to provide information to support these assessments.

The **DoLS service will continue to expect new DoLS requests from Managing Authorities where these are required** and will process these according to the urgency of the case. These assessments will need to be conducted mostly (if not entirely) via video call and we will need support from Managing authorities in these instances.

Arrangements for those objecting but not currently under a DoLS authorisation:

Where a person is known to object, we must consider how a DoLS authorisation can be put in place. When you send in DoLS requests please ensure that you **clearly highlight in the Form and subject of email**, that the person is objecting. The Supervisory Body will then consider how to make arrangements for the necessary assessments.

New restrictions and changes to care arrangements for someone already under a DoLS authorisation:

The Lambeth DoLS Service has received a number DoLS Authorisation Review Requests (Form 10). A Review should only be requested where there is thought to be a significant change in the person's circumstances which means that either they no longer meet the requirements for detention under the DoLS, or they still meet the requirements but for significantly different reasons from those stated in the current DoLS paperwork.

Please for the time being **only send a DoLS Form 10 Review request for significant changes in a person's circumstances**, such as the person starts to object.

For new restrictions such as covert medication, bed sensor mat or bed rails, **please use the MCA process (mental capacity assessment and best interests decision) and ensure that your records clearly reflect this has been done.** *Please find enclosed further guidance on recording mental capacity assessments.*

You must also ensure the care plan is updated with the new restrictions. This will be checked at the point that the DoLS authorisation comes up for renewal. Where Providers wish to notify the Supervisory Body, this can be done via the Monitoring Form (and not the Form 10).

New restrictions for detention/quarantining:

The DoLS provide the legal framework for breaching a person's Article 5 Right to Liberty on account of the person being "of unsound mind". This is why, in order for a DoLS authorisation to be granted, we must show that the person is suffering from a mental disorder.

It is also possible to breach a person's Article 5 Right to Liberty "for the prevention of the spreading of infectious diseases". This is what the government have done to us all (irrespective of our mental capacity or whether we are suffering from a mental disorder); they have told us all to stay at home and have restricted our access to going outside to only essential excursions.

Therefore if you have had to increase an incapacitated person's restrictions in relation to the prevention of COVID-19 in line with the government direction to stay at home, then these restrictions are probably covered by that government direction and do not require the MCA process, as they apply to all of us. However, best practice would be to record on care plans that additional restrictions have been placed as a result of government guidance due to the Coronavirus outbreak.

If you have any concerns or questions, please do email LambethDoLS@lambeth.gov.uk and we will endeavour to respond to you as soon as we can.

Yours faithfully,

Lambeth DoLS Service

(Please see below next page for MCA guidance and template)

Advice on recording mental capacity assessments during coronavirus:

Minimum recording requirements

The table below sets out what as a minimum need to be recorded to show the MCA has been followed for decisions taken during the coronavirus outbreak.

The recording required depends on:

- whether there could be significant risks or adverse consequences (including if the person does not have treatment or care), and
- the person’s mental capacity to decide on the treatment or care arrangements proposed.

| | Low risk treatment or care arrangements | Treatment or care where there are significant risks or restrictions (<i>including if the person declines</i>) |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Person has capacity to make decisions about the treatment or care | Only record the treatment or care provided. | Record must include that person has been given information about all significant possible adverse consequences. |
| Person lacks capacity to make decisions about the treatment or care (Other records required if: <ul style="list-style-type: none"> • emergency treatment • there is an attorney or deputy with authority to make the decision • there is an advance decision to refuse treatment) | Record to show person has been assessed as lacking capacity to make decisions about the treatment or care, and healthcare provided in their “ <i>best interests</i> ”. | Record must show patient has been assessed as lacking capacity, must include how the best interests decision was made, reasons for the decision and who was consulted incl. person’s views and those of family, friends or staff consulted. |

Mental Capacity Assessment record during COVID-19

| | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|------------------------------------------------------------------------------------|------------------------|
| 1.1 Person's details | | | |
| Name: | | Date of Birth: | |
| Case/Ref: | | | |
| Present Address/Location: | | | |
| Home Address (if Different): | | | |
| 1.2 Details of person carrying out this assessment | | | |
| Name: | | | |
| Role: | | Organisation: | |
| Tel: | | Email: | |
| 1.3 What is the specific decision relevant to this capacity assessment? (Suggest this is written in 1st person) | | | |
| Details: | | | |
| 1.4 Have you been supported to carry out the capacity assessment by another person or professional? | | | |
| <input type="checkbox"/> Yes | | <input type="checkbox"/> No (If yes, give details of person/s below) | |
| Name | Profession | Relationship to Person | Contact details |
| | | | |
| 1.5 Identify any legally appointed Decision Maker: | | | |
| Is there Power of Attorney or Court appointed deputy in place with authority to make this decision? | | | |
| <input type="checkbox"/> Yes Details: | | | |
| <input type="checkbox"/> No | | | |
| 1.6 Assessment process | | | |
| <input type="checkbox"/> The person is considered to have an impairment/disturbance in the functioning of the mind/brain. | | | |
| <input type="checkbox"/> I have provided all the information the person needs to make an informed decision, incl. all options available. | | | |
| <input type="checkbox"/> The decision cannot be delayed, and I have chosen the best time for the person to engage in the assessment. | | | |
| Record below how the identified impairment or disturbance in Stage 1 is affecting the service user's ability to make the decision: | | | |
| <input type="checkbox"/> cannot understand <input type="checkbox"/> cannot retain <input type="checkbox"/> cannot use or weigh up <input type="checkbox"/> cannot communicate | | | |
| <i>Please describe in brief sentence how you determined this</i> | | | |

1.7 Best Interests Decision Making

- I have consulted with all those involved with the person incl. family/friends/person themselves
- The decision taken is one that is the less restrictive and determined to be in their best interests

1.8 Please outline what action has been agreed

Date:

Signed:

London Borough of Lambeth – Adults and Health Directorate

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