

Official:



11<sup>th</sup> November 2020

Dear Provider,

## DEPRIVATION OF LIBERTY SAFEGUARDS (DOLS) DURING THIS TIME

We are writing further to the [last letter sent to you in April](#) regarding the government's guidance which outlined the expectations around MCA/DoLS arrangements during the coronavirus pandemic.

This guidance was reviewed 7<sup>th</sup> September and then again 15<sup>th</sup> October 2020. The latest version can be found [here](#). We have summarised the key points from this below for your attention:

- The Mental Capacity Act (MCA)/Deprivation of Liberty Safeguards (DoLS) are unchanged by the Coronavirus Act and therefore statutory expectations on Managing Authorities remain the same.
- Supervisory Bodies should continue to prioritise cases using standard prioritisation processes. Therefore, when sending in DoLS requests for people who are objecting, Managing Authorities must *clearly highlight the objection* in the email subject line and request paperwork.
- Regarding extra restrictions during COVID, the guidance states that in most cases, changes to a person's care or treatment in these scenarios will not constitute a new deprivation of liberty. Care and treatment can continue to be provided in the person's best interests.

The DoLS Service has considered the guidance and is advising DoLS Assessors and Managing Authorities of the approach that will now be used:

- Lambeth did suspend DoLS visits at the peak of COVID. Now, in line with the updated guidance, when deciding whether or not to visit in person, professionals should consider the [local COVID alert level](#) of the place they are considering visiting.
- Visits in person may be carried out in certain circumstances. These may include *where the person is unable to engage via video assessment, or the case is going to court*.
- The [Government Guidance on Care Home Visiting](#) was published 4<sup>th</sup> November 2020 and applies for the period of the national restrictions beginning 5<sup>th</sup> November 2020. It clearly states:
  - Maintaining some opportunities for visiting to take place is critical for residents' wellbeing and their relationships with friends and family.
  - Providers are best placed to decide how to deliver visits in their own setting, however decisions around visiting should be reached through working with the resident, family/friends and other relevant professionals such as social workers or clinicians where appropriate.
  - Decisions on visiting policies require a risk assessment which balances benefits to the residents, against the risk of visitors introducing infection, and the precautions that will be taken to prevent infection during visits (including PPE use and hand washing)

- Visits in exceptional circumstances such as end of life should continue at all times.
- If either a s12 Doctor or Best Interests Assessor (BIA) cannot visit the cared-for person during COVID-19, then assessors need to use the next best method available as outlined in the document enclosed at the end of this letter: “DoLS Assessment Process during COVID Nov 2020”. In these scenarios, we ask Providers to support in enabling these assessments to be done.
- BIAs are required to outline in their reports, the impact on the person’s care and environment. They will be looking at how Providers are supporting contact with family members, accessing outside spaces and social interactions/activities/stimulation.
- Managing Authorities should only request a DoLS review (Form 10) where the person starts to object, or where the person becomes subject to additional restrictions *and these are significantly different* from those stated in the current DoLS paperwork.
- For other 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. Further guidance on recording mental capacity assessments has been sent out to all Providers and we enclose this again at the end of this letter.
- You must also ensure the care plan is updated with the new restrictions implemented under the wider MCA. Where Providers wish to notify the Supervisory Body of these additional restrictions, this can be done via the Monitoring Form (and not a Form 10).

We recognise that due to the COVID-19 situation there have been significant increased pressures on your services. Some of the issues that have emerged about responses by Providers have included blanketed decision-making around testing and DNARs. A reminder that the government guidance states that any decisions made must be taken for each person and not for groups of people.

Another concern raised is that due to the need to contain the spread of infection, use of self-isolation has resulted in residents become significantly deconditioned and losing mobility/other functions. We appreciate the difficulty of this but would ask Providers to consider how best to mitigate the risks with these types of restrictions.

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 understand that Providers will continue to place restrictions on contact with the outside world, including visits. We thank you for the proactive steps taken to increase residents’ access to alternative means of communication (such as telephone, skype, WhatsApp video calling, zoom, facetime). We would encourage those who have not yet taken these steps, to do so as a priority.

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

Yours faithfully,

Emma Ekwegh (DoLS Co-Ordinator) and Janna Kay (Adult Safeguarding Lead)

Lambeth DoLS Service

(Please see below next page for MCA guidance and template, and DoLS Assessment Process during COVID)

Advice on recording mental capacity assessments during coronavirus:

### Minimum recording requirements

The table below sets out what, as a minimum, needs 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.

	<b>Low risk treatment or care arrangements</b>	<b>Treatment or care where there are significant risks or restrictions</b> ( <i>including if the person declines</i> )
<b>Person has capacity to make decisions about the treatment or care</b>	Only record the treatment or care provided.	Record must include that person has been given information about all significant possible adverse consequences.
<b>Person lacks capacity to make decisions about the treatment or care</b> (Other records required if: <ul style="list-style-type: none"> <li>• emergency treatment</li> <li>• there is an attorney or deputy with authority to make the decision</li> <li>• there is an advance decision to refuse treatment)</li> </ul>	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.



Brief MC assessment template



DoLS Assessment Process during COV