

Assessments under the Mental Capacity Act 2005

Deprivation of Liberty Safeguards (MCA DOLS)

Advice correct as of May 2014



Introduction

Under the Mental Capacity Act Deprivation of Liberty Safeguards (MCA DOLS), six assessments have to be successfully conducted before a local authority (supervisory body) can authorise the deprivation of an individual's liberty in a hospital or a care home. These assessments must be carried out by appropriately qualified assessors appointed by the supervisory body.

This factsheet provides a broad overview of the six assessments and the appointment of assessors. Detailed provisions about assessments and assessors are set out in the relevant legislation and in the Deprivation of Liberty Safeguards Code of Practice which must be consulted by all involved in work relating to MCA DOLS.

Assessments

The six assessments needed in order to satisfy the requirements of the MCA DOLS (described in paragraphs 4.23 to 4.76 of the Code of Practice), and usually completed in the following order, are:

- Age assessment
- No refusals assessment
- Mental capacity assessment
- Mental health assessment
- Eligibility assessment
- Best interests assessment.

Assessments must be completed within 21 days for a standard deprivation of liberty authorisation, or, where an urgent authorisation has been given, before that authorisation expires.

What do the assessments entail?

Age assessment – confirms whether the relevant individual is 18 or over.

No refusals assessment – establishes whether an authorisation would conflict with other existing authority for decision-making for that person, such as an advance decision to refuse treatment under the Mental Capacity Act 2005.

Mental capacity assessment – establishes whether the relevant individual lacks capacity to decide whether or not they should be accommodated in the relevant hospital or care home to be given care.

Mental health assessment – determines whether the relevant individual has a mental disorder within the meaning of the Mental Health Act 1983. This is not an assessment to determine whether the person requires mental health treatment – the objective is to ensure that the individual is medically diagnosed as being of “unsound mind”.

Eligibility assessment – relates specifically to the relevant individual's status, or potential status, under the Mental Health Act 1983. An individual is eligible unless they are:

- Detained under the Mental Health Act 1983
- Subject to an obligation placed on them under the Mental Health Act 1983, such as a guardianship order requiring them to live somewhere else.

Or

If the proposed authorisation relates to a deprivation of liberty in a hospital wholly or partly for the purpose of treatment of a mental disorder, the relevant individual will be eligible unless:

- They object to being admitted to hospital, or to some or all the treatment, **and**
- They meet the criteria for an application for admission under section 2 or section 3 of the Mental Health Act 1983.

Best interests assessment – establishes whether deprivation of liberty is occurring or is going to occur, and if so, whether it is:

- In the best interests of the relevant individual to be deprived of liberty
- Necessary for them to be deprived of liberty in order to prevent harm to themselves
- A proportionate response to the likelihood of suffering harm and the seriousness of that harm.

Who can carry out the assessments?

Supervisory bodies have a legal obligation to provide assessors who are both suitable and eligible. Local lists of trained doctors are in place, and a national database of assessors is currently being developed. Secondary legislation¹ and the Code of Practice contain detailed provisions about who can carry out the assessments.

While the six assessments do not have to be completed by different assessors, there must be a minimum of two assessors – the mental health and best interests assessors must be different people.

Mental health – the assessment must be carried out by a doctor, and the doctor has to be approved under section 12 of the Mental Health Act 1983, or be a registered medical practitioner with at least three years' post-registration experience in the diagnosis or treatment of mental disorder, eg, a GP with a special interest.

Doctors will need to complete training for deprivation of liberty mental health assessors provided by the Royal College of Psychiatrists and keep their training up to date.

Best interests – the assessment must be undertaken by an Approved Mental Health Professional (AMHP), social worker, nurse, occupational therapist or chartered psychologist. Best interest assessors must have two years' post-qualification experience and have completed approved training to be a best interests assessor.

In addition, they must not be involved in the care or treatment of the individual that they are assessing.

Age assessment and no refusals assessment – anyone who is eligible to carry out a best interests assessment is also eligible to carry out an age assessment and a no refusals assessment.

Mental capacity assessment – can be undertaken by anyone who is eligible to act as a mental health or best interests assessor.

Eligibility assessment – must be completed by either:

- A mental health assessor who is also a section 12 approved doctor; or
- A best interests assessor who is also an approved mental health professional (AMHP).

General requirements for appointing assessors

In addition, relevant legislation and the Code of Practice state that, when appointing assessors, supervisory bodies must ensure that:

- Assessors do not have a financial interest in the case of the person they are assessing.
- Assessors must not be a “relative” of the individual being assessed nor of a person with a financial interest in the individual's case. The term “relative” is defined in secondary legislation.²
- The potential assessor has experience of working with individuals with similar needs to the individual being assessed, such as older people or people with brain injuries.

Protection against liability

All assessors must satisfy the supervisory body that they hold an adequate and appropriate indemnity arrangement which may be in the form of a policy of insurance; an indemnity arrangement (such as MPS indemnity or NHS indemnity); or a combination of a policy of insurance and indemnity arrangement. Supervisory bodies may require written evidence of an indemnity arrangement.

MPS members should contact the Membership Helpline on **08457 187 187** to request a specific letter for MCA DOLS in the event that the supervisory body requests such evidence.³

1 Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations SI 2008 No.1858

No. 1858 as amended by the Mental Capacity (Deprivation of Liberty: Monitoring and Reporting; and Assessments – Amendment) Regulations 2009

2 See note 1 above

3 Mental Capacity (Deprivation of Liberty: Monitoring and Reporting; and Assessments – Amendment) Regulations 2009

Further information

- MPS factsheet, *Introduction to MCA DOLS* – www.medicalprotection.org/uk/factsheets
- The Deprivation of Liberty Safeguards Code of Practice (August 2008) – www.dh.gov.uk
- Department of Health – www.dh.gov.uk
- The Department of Health has also published these guides:

A guide for primary care trusts and local authorities (supervisory bodies)

A guide for hospitals and care homes (managing authorities) – www.dh.gov.uk
- Royal College of Psychiatrists – www.rcpsych.ac.uk

For medicolegal advice please call us on:

0845 605 4000

or email us at:

querydoc@mps.org.uk

This information provides only a general overview of the topic and should not be relied upon as definitive guidance. If you are an MPS member, and you are facing an ethical or legal dilemma, call and ask to speak to a medicolegal adviser, who will give you specific advice.

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