

**Mental Capacity Act  
and  
Deprivation of Liberty Safeguards  
(‘DOLS’)**

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# MCA: Common Law with additions

- IMCA service
- Advance Decisions to Refuse Treatment
- Lasting Powers of Attorney for health and welfare decisions
- Authority to treat: s.5 MCA
- Restrictions on restraint: s.6 MCA
- Deprivation of Liberty Safeguards

# Introduction of DOLS

- Introduced into the MCA 2005 through the MHA revisions of 2007:
- Devised to meet the 'Bournewood Gap':
- Will come into effect from 1 April 2009.
  
- Primarily, to prevent **ARBITRARY** decisions to deprive incapacitated people of their liberty (other than by use of the MHA 1983):

# What is Deprivation of Liberty?

- Derived from case law in Europe and here;
- ‘Bournewood’ case, JE/DE vs. Surrey, HM vs. Switzerland etc.
- ‘not allowed to leave facility’ even escorted;
- Family/friends barred;
- Extreme restriction on freedom of movement;
- Inappropriate use of sedative medication.

# Legal Protections through DOLS

- Protection for those who may be so deprived include:
- A ECtHR compliant and clear system;
- Rights to challenge Deprivation of Liberty Authorisations;
- Rights to 'relevant person's representative' and to IMCA.

# What will this system look like?

- New 'SUPERVISORY BODIES' will be set up to receive and process requests for Deprivation of Liberty authorisation from MANAGING AUTHORITIES (registered care homes and hospitals):
- Local Authority will be the SB for registered care homes, PCT will be SB for hospitals;
- Joint Supervisory Body bureaucracy.

# 6 Statutory Assessments

- 'age' and 'no refusals' can be carried out by best interests assessors (BIAs);
- 'mental capacity' can be carried out by **either a BIA or a doctor**;
- 'mental health' can **only be carried out by a doctor** (as required by the ECHR);
- 'eligibility' can **only be carried out by a s.12 approved doctor or a BIA who is an AMHP**;
- 'best interests' can **only be carried out by BIA**.

## In other words...

- A minimum of two assessors, with 'mental health' and 'best interests' undertaken by different people who must have specialist training;
- Every assessment will require a doctor and at least one of an AMHP, nurse, OT or psychologist;
- Since 'eligibility' requires either a s.12 doctor or an AMHP, every assessment requires one of these professionals.

# More on Medical Assessors

- Mental health assessors must be either s.12 or 3 years post-registration with experience in the diagnosis and treatment of mental disorder;
- Training for s.12 doctors is one day and for other doctors 2 days:
- this can be e-learning (or face to face);
- All medical assessors will have to undertake refresher training annually.

# Time Scales

- For a 'standard authorisation', the SB has 21 days (not 'working days') for all reports;
- For an 'urgent authorisation', the SB has 7 days, which can be extended 'in exceptional circumstances' for a further 7 days.
- Transitional arrangements will apply for requests received in April 2009 only.

## Not part of the medical role:

- The BIA is responsible for ascertaining whether DoL is happening or will happen;
- And, if so, whether this is the least restrictive option for meeting the relevant person's care needs;
- Also for appointing IMCA, identifying a 'relevant person's representative'; collating reports and making recommendation to the SB.