

Kent MCA DOLS Service Briefing

March 2017



Current Position

Working in partnership

We rely on working in partnership with all Managing Authorities in order to safeguard our most vulnerable service users.

The effectiveness of our work in screening, prioritising and allocating referrals largely depends on the quality of up-to-date information we receive from the individual Managing Authority regarding the relevant person. Please provide as much relevant information as possible when you make an application, and ensure you call or email to inform us immediately if there is a change of circumstances for the relevant person for whom you have already made an application.

Whilst working with you to process the increasing numbers of applications, we want to highlight our position that we would not discourage Managing Authorities from making DOLS applications. If you believe that a person is or will be deprived of their liberty, you must make an application. We do encourage **applications to be made on a case-by-case basis, following consideration of the person's mental capacity and best interests, in compliance with MCA.**

We continue to screen all DOLS applications on a daily basis as per previous briefing, using the ADASS screening tool. Re-applications will be screened in the same way as new applications. We are receiving 400-450 applications per month and prioritising on average 30-35% of all applications.

The absence of government funding means that there continues to be a long waiting time period before a prioritised referral is being assessed.

Screening and prioritising

Like other local authorities, we continue to use the ADASS screening tool below in order to determine whether a referral should be prioritised for assessment. There are some slight adjustments made to this. The tool sets out the criteria most commonly applied which indicates that an urgent response may be needed so as to safeguard the individual concerned. Each of the criteria is not weighted. We take all individual circumstances of each case in considering prioritisation, in order to focus our limited resources on the most vulnerable people.

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The criteria are used as an indicative guide only as it will generally be based on information provided by the Managing Authority in the application and each case must be judged on its own facts.

We also take into account other protective factors:

- whether there are Family and Friends
- Lasting Powers of Attorneys or Deputies for Health and Welfare with decision making authority
- Case Managers and/or other professionals already involved in the care of the relevant person,
- Safeguarding alerts
- IMCA/ Advocacy involvement.

ADASS Screening Tool :

High	Medium	Low
<p>Psychiatric or Acute Hospital and not free to leave. In these cases the following applies:</p> <ul style="list-style-type: none"> <i>The Relevant Person has been subject to a Mental Health Section within the last 6 months</i> <i>The Relevant Person is subject to a high level of restriction eg, chemical restraint, physical restraint, asking/attempting to leave.</i> <p>Continuous 1:1 care during the day and/or night</p> <p>Sedation / medication used frequently to control behaviour</p> <p>Physical restraint used regularly – equipment or persons:</p> <ul style="list-style-type: none"> <i>Bed Rails, wheelchairs etc do not need to be prioritised unless other high risk factors are present . Restriction from bed rails/equipment can be used using MCA.</i> 	<p>Asking to leave but not consistently</p> <p>Not making any active attempts to leave</p> <p>Appears to be unsettled some of the time</p> <p>Restraint or medication used infrequently</p> <p>Appears to meet some but not all aspects of the acid test</p>	<p>Minimal evidence of control and supervision</p> <p>No specific restraints or restrictions being used e.g.in a care home not objecting, no additional restrictions in place</p> <p>Have been living in the care home for some time (at least a year)</p> <p>Settled placement in care home/ hospital placement, no evidence of objection etc but may meet the requirements of the acid test</p> <p>End of life situations, intensive care situations which may meet the acid test but there will be no benefit to the person from the Safeguards</p>

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<p>Restrictions on family/friend contact (or other Article 8 issue)</p> <p>Objections from relevant person (verbal or physical)</p> <ul style="list-style-type: none"><i>Occasional verbal requests to leave will not be prioritised if this is the only factor present. If the verbal requests are consistent then this will be prioritised.</i> <p>Objections from family/friends</p> <p>Attempts to leave</p> <p>Confinement to a particular part of the establishment for considerable period of time in order to manage behavioural issues.</p> <p>New or unstable placement are not routinely prioritised UNLESS other high risk factors are present.</p> <p>Possible challenge to Court of Protection, or complaint</p>		
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The Relevant Person who is already subject to a DOLs which is about to expire:

- *These cases are not routinely prioritised unless there are other high risk factors in this list present.*

Non Priority Applications

We are undertaking an initiative to review applications that have currently not been prioritised for assessment. Please see below for the methodology we are using for this :

- Care home managers will be contacted by the DoLS office to review the current status of each relevant person not allocated to a Best Interests Assessor.
- Currently this exercise is undertaken fortnightly, with an expectation that the frequency will increase in the future.
- It is appreciated that this will take time where there are several persons awaiting Best Interest Assessments, and in these circumstances the DoLS office staff member will make arrangements to call back the Managing Authority at a more convenient time.

It is anticipated that by June/July 2017 we will have developed a pro-forma for voluntary use by managing authorities based upon learning from our initiative. If you would be interested or agreeable to being involved in its development please email dols.office@kent.gov.uk and you will be contacted nearer the time.

In the interim period please do not hesitate to contact the DoLS office dols.office@kent.gov.uk or 03000 415777 if there have been any significant changes in circumstances for any relevant persons you have previously referred, e.g. the person has moved, the situation has improved or deteriorated so that the DoLS Office may either re-screen or withdraw the original application accordingly.

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MCA Best Practice

If your application has not already been processed, continue to comply with the Mental Capacity Act

- **Consider mental capacity on a decision specific and time specific basis,**
- **Act in the Person's Best Interests**
- **Make every attempt to provide care/treatment in the least restrictive way,** as supported by relevant care plans and risk assessments, subject to reviews.

It is important to highlight that **a DOLS authorisation does not authorise care and treatment**, so a relevant person under a DOLS authorisation should not be cared for differently from someone whose application has not been prioritised and therefore an outcome not issued. All care and treatment decisions must be underpinned at all times by the principles of MCA.

Important Updates :

Changes to Coroner duty to undertake inquest in DoLS and other authorisations under the Mental Capacity Act 2005

From Monday, 3rd April 2017, Coroners will no longer have a duty to undertake an inquest into the death of every person who was subject to an authorisation under the Deprivation of Liberty Safeguards under the Mental Capacity Act 2005.

In these cases an inquest will still be required if the person died before Monday 3 April 2017. However, for any person subject to a DoLS authorisation who dies on the 3rd or any time after, their death need not be reported to the coroner unless the cause of death is unknown or where there are concerns that the cause of death was unnatural or violent, including where there is any concern about the care given having contributed to the persons death.

Any person with any concerns about how or why someone has come to their death can contact the coroner directly. This will not change where a person subject to a DoLS authorisation. What will change is that the coroner will no longer be duty bound to investigate every death where the deceased had a DoLS in place.

The Managing Authority should still inform the DOLS Office should the Relevant Person subject to a DOLS Authorisation, passes away.

For more information on coroner services please see the [Coroner Services Guides](https://www.gov.uk/government/publications/guide-to-coroner-services-and-coroner-investigations-a-short-guide) at this link <https://www.gov.uk/government/publications/guide-to-coroner-services-and-coroner-investigations-a-short-guide>

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The Law Commission Report

The Law Commission published its final report on 13th March 2017 with its recommendations for reforming the Deprivation of Liberty Safeguards (DoLS) system.

The new proposed "Liberty Protection Safeguards" would apply to all care settings, with the current system of Supervisory Bodies and Managing Authorities being replaced by the body responsible for the Relevant Person authorising the deprivation if it is necessary and proportionate. It is intended that a second tier of protection in the form of a referral to an Approved Mental Capacity Practitioner will be introduced should the person be objecting to the proposed care arrangements.

The next step will be for the government to respond to the recommendations and legislative change on this scale is likely to be a slow process.

Further information, and to access the report, please follow the link below:

<http://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/>

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www.kent.gov.uk/mentalcapacityact