

Conditions attached to a standard authorisation for Deprivation of Liberty

Introduction

When undertaking an assessment under the Deprivation of Liberty Safeguards, the Best Interests Assessor (BIA) has authority to recommend that particular conditions should be attached to a standard authorisation, if the BIA concludes that the best interests assessment is met.

The conditions must directly relate to the deprivation of liberty authorisation, and should not relate to general care planning issues.

The supervisory body must have regard to any recommended conditions made by the BIA, but is not compelled to impose them.

However, the BIA can, if they so wish, specify in the best interests assessment that the supervisory body must consult with the BIA if any or all of the recommended conditions are not imposed. This is the case if the BIA considers that failure to impose any or all of the conditions may lead them to conclude that the deprivation of liberty would no longer be in the service user/patient's best interests.

The DH issued a guidance note in May 2010, stating that there is evidence that the guidance in the DoLS supplement to the MCA Code of Practice was not being following. This was because BIAs were recommending, and supervisory bodies were imposing conditions which did not directly relate to the deprivation of liberty, and were at times appearing to use them as "levers" to obtain changes to the general care of people who were being deprived of their liberty under a standard authorisation.

This document attempts to assist BIAs and supervisory bodies in identifying appropriate conditions which comply with the Code of Practice.

The document contains:

- [Relevant extracts from the Mental Capacity Act 2005 Schedule A1 \(as amended by the Mental Health Act 2007\)](#)
- [Relevant extracts from the "Deprivation of Liberty Safeguards Code of Practice to supplement the main Mental Capacity Act 2005 Code of Practice" \(MCA DoLS Code of Practice\)](#)
- [Guidance for Best Interests Assessors and supervisory bodies on identification of conditions which comply with the MCA DoLS Code of Practice](#)
- [Examples of conditions which comply with the MCA DoLS Code of Practice](#)

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Mental Capacity Act 2005, Schedule A1 (selected paragraphs)

43 The assessor may include in the assessment recommendations about conditions to which the standard authorisation is, or is not, to be subject in accordance with paragraph 53.

- 53 (1) A standard authorisation may be given subject to conditions.
- (2) Before deciding whether to give the authorisation subject to conditions, the supervisory body must have regard to any recommendations in the best interests assessment about such conditions.
- (3) The managing authority of the relevant hospital or care home must ensure that any conditions are complied with.
- 55 (1) A standard authorisation must state the following things—
- (a) the name of the relevant person;
 - (b) the name of the relevant hospital or care home;
 - (c) the period during which the authorisation is to be in force;
 - (d) the purpose for which the authorisation is given;
 - (e) any conditions subject to which the authorisation is given;
 - (f) the reason why each qualifying requirement is met.

Variation of conditions ground [for review]

- 107 (1) The best interests requirement is reviewable on the ground that—
- (a) there has been a change in the relevant person's case, and
 - (b) because of that change, it would be appropriate to vary the conditions to which the standard authorisation is subject.
- (2) This ground is referred to as the variation of conditions ground.
- (3) A reference to varying the conditions to which the standard authorisation is subject is a reference to—
- (a) amendment of an existing condition,
 - (b) omission of an existing condition, or
 - (c) inclusion of a new condition (whether or not there are already any existing conditions).

Deprivation of Liberty Safeguards Code of Practice to supplement the main Mental Capacity Act 2005 Code of Practice (selected paragraphs)

4.74 The best interests assessor may recommend that conditions should be attached to the authorisation. For example, they may make recommendations

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around contact issues, issues relevant to the person's culture or other major issues related to the deprivation of liberty, which – if not dealt with – would mean that the deprivation of liberty would cease to be in the person's best interests. The best interests assessor may also recommend conditions in order to work towards avoiding deprivation of liberty in future. But it is not the best interests assessor's role to specify conditions that do not directly relate to the issue of deprivation of liberty.

4.75 Conditions should not be a substitute for a properly constructed care plan (see paragraph 2.7 on good practice for care planning). In recommending conditions, best interests assessors should aim to impose the minimum necessary constraints, so that they do not unnecessarily prevent or inhibit the staff of the hospital or care home from responding appropriately to the person's needs, whether they remain the same or vary over time. It would be good practice for the best interests assessor to discuss any proposed conditions with the relevant personnel at the home or hospital before finalising the assessment, and to make clear in their report whether the rejection or variation of recommended conditions by the supervisory body would significantly affect the other conclusions they have reached.

Guidance for Best Interests Assessors and supervisory bodies on identification of conditions which comply with the MCA DoLS Code of Practice

Conditions which are attached to a standard authorisation must relate directly and specifically to the deprivation of liberty, and should not be general in nature, or be a lever to improve the overall care plan.

How can BIAs and signatories ensure that conditions are directly related to the deprivation of liberty?

There are three main purposes for conditions, which have a direct relationship to the deprivation of liberty.

1. to ensure the deprivation is "secured"
2. to limit the deprivation as much as possible
3. to work towards or bring about an end to the deprivation.

When considering whether a potential condition is appropriate or not, consider whether it would be needed even if the person was not deprived of their liberty.

- If the answer is yes, then it's a care planning issue.
- If the answer is no, then it's (probably) a valid condition

BIAs should note the statement in the MCA DoLS Code of Practice stating that they should discuss any proposed conditions with the home or hospital *before* finalising the assessment.

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Examples of conditions which comply with the MCA DoLS Code of Practice

To ensure the deprivation is "secured"

- For a particular reason, or to avoid a specific risk, specification that the person will not leave the establishment at all
- *For a limited time*, to specify that the person will not have contact (or will only have supervised contact) with a particular person or persons

This condition would need to be accompanied by an application to the Court of Protection for a judgement on contact in the longer term

To limit the deprivation as much as possible

- If a person regularly visited the church or the mosque before being deprived of their liberty, a condition could be put on the authorisation to ensure that this continued.

This is differentiated from a person who, while being religious, had not been to church/mosque for years previously, and a condition is made to add that input, which was not being removed by the authorisation
- With HL (the Bournemouth case), a condition could have been made by the supervisory body that his carers must be permitted to visit at least 3 times per week, as a way of maintaining his social contacts

To work towards or bring about an end to the deprivation

A condition can be specified to attempt to get the person out of the care home or hospital and therefore end the deprivation

- To arrange a home visit to look at the possibility of returning home;
- To arrange a review of medication to see whether a change will improve the person's mental state and therefore mental capacity to the extent that deprivation is no longer needed.
- To ensure an Occupational Therapy or physiotherapy assessment is undertaken in a hospital to assess the risks of the person returning home
- To explore the possibility of a placement on the ground floor to reduce risk of falling down the stairs [and therefore remove the need to lock the person in their room at night]