

Gwent Deprivation of Liberty Safeguards Consortium



Conducting a Mental Capacity Assessment for decisions around care and residence (general guidance)

The Deprivation of Liberty safeguards framework requires that 6 qualifying requirements are met before a DoLs authorisation can be given.

The six assessments are as follows:

- Age
- Mental Health
- Mental Capacity
- Best Interests
- Eligibility
- No refusals

The purpose of the Mental Capacity Assessment is to establish whether the relevant person lacks capacity to decide whether or not they should be accommodated in the relevant hospital or care home to be given care or treatment. (*DoLs Code of Practice 4.29*).

The Mental Capacity Assessment can be undertaken by anyone who is eligible to act as a mental health assessor or a best interest assessor (*DoLs Code of Practice 4.31*). The supervisory body may rely on equivalent assessments in relation to decisions about care and residence that have already been completed by individual clinicians or teams providing care for the relevant person (*see Welsh Assembly Guidance for Supervisory Bodies 4.32 Equivalent assessments*).

To determine if a person has or lacks capacity in relation to a particular decision the MCA code of practice notes at 5.52 '*Professionals should **never** express an opinion without carrying out the proper examination and assessment of the persons capacity to make a decision. They **must** apply the appropriate test*'

The appropriate test is the two stage assessment (*MCA Code Practice*)

- Does the person have an impairment of the mind or brain, or a disturbance that effects the functioning of their brain/mind? **Diagnostic Test**
- Does the impairment or disturbance mean that the person is unable to make a specific decision when they need to? **Functional test.**

Relevant information when conducting a MCA in relation to care and residence

The relevant information to be considered when determining a person's capacity to make decisions about care and residency have been set out and adopted as reasonable precedent to follow in relevant legal judgements handed down by the courts (***LBX v K and L [2013] EWHC 3230, Re FX [2017] EWCOP 36***)

Information to consider about care and residence:

- In what areas does P need support?
- What sort of support does P Need?
- Who will be providing P with support?
- What would happen if P did not have the support or refused it?
- Does P understand he / she can complain about care if he / she is not happy with it?
- Does P understand the reason for any restrictions placed upon him / her?

Relevant information in relation to residence where there are available options:

- What options are available, what sort of property are the options and what facilities are provided
- What sort of care would P receive?
- Would P be living or visiting at the residence / hospital and what is the difference between living somewhere and visiting, where are they?
- What activities / care are available at each options?
- How would P be able to see his / her family in each option?
- Do the options include any payments P needs to make?

- How these would be managed and by whom

Are there relevant dos and don'ts at each option?

e.g.

1. Can P leave when he / she chooses to
2. Does P require any escort of additional supervision or surveillance
3. Does P understand any restrictions placed upon them?

Additional Considerations

Re P [2014] EWHC 119 CoP Cobb J considering what conclusions should be made when a person deliberately avoids engaging or co-operating with the MC assessment process '*... it seems to me that a patients lack of engagement or co-operation with the assessment may contribute in itself to a conclusion that a patient is unable to understand the information relevant to the decision, or if they were shown to understand, that they may not be able to use or weigh up that information...*'

Summary

The above list is not an exhaustive list but provides some general guidance to be considered when undertaking a decision specific Mental Capacity Assessment to determine whether the relevant person lacks capacity to decide whether or not they should be accommodated in the relevant hospital or care home where they are receiving care or treatment.

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