



**COVID-19 – Deprivation of Liberty Safeguards
(DoLS) Guidance**

THE MID AND WEST WALES SAFEGUARDING BOARD

April 2020

Introduction

As a result of the recent COVID-19 outbreak and the clear restrictions on visiting residential and nursing care homes at this time, the Mid and West Wales Safeguarding Board Region has agreed the following approach to managing Deprivation of Liberty Safeguards applications and authorisations.

Due to the risks associated with the outbreak, there has been a collective agreement that face to face visits for the purpose of Deprivation of Liberty Safeguards assessments are not deemed necessary at this time unless there are safeguarding concerns i.e allegations of abuse and/or neglect. The Honourable Mr Justice Hayden (Vice President of the Court of Protection) has been **‘unambiguous in advising that visits to care homes are to be strongly discouraged.’**

This guidance applies to Local Authorities and Health Boards as Supervisory Bodies who will apply their usual mechanisms for prioritising assessments. This guidance may change in light of any further guidance from Welsh Government.

Applications in Health Boards

The management of DoLS referrals in the Health Board will substantially follow the process below.

- References to care homes and case management teams can be read as referring to hospital wards and multidisciplinary teams (MDTs)
- Ward based doctors will be asked to provide evidence of a mental disorder as an equivalent assessment of Mental Health.
- Authorisation periods in hospitals are usually substantially shorter than those in care homes and this will be reflected in the timescale for any Authorisations given under these temporary arrangements

This approach applies to:

- New standard applications
- New Urgent (with standard) applications
- Further standard applications – Previous authorisation for 12 months
- Further standard applications – Previous authorisation less than 12 months
- Applications currently in the Court of Protection process

New Standard Applications (no previous DoLS authorisation)

1. Gather information from all other sources as per the Code of Practice, including records of any other previous assessments (including capacity assessments for same or similar decision)
2. Liaise with care management teams and the care home to provide as much information as possible about the person and the circumstances of admission.
3. Have discussions with family members and other interested parties as per usual process for DoLS assessments.
4. Attempt to use any other means available for speaking with “P”. E.g. Telephone/Skype etc

5. Consider as a matter of professional judgement whether this information permits us to reach a decision to authorise. To include evidence that P's condition is degenerative and not likely to improve.
6. If sufficient information is available, we will authorise restrictions to the minimum extent considered necessary to protect, and **in any event up to a maximum of 6 months**. If the authorisation is given for a 6-month period, then a review **must** be undertaken in month 3. If the restrictions on visiting care homes is lifted prior to the 3- or 6-month stage, we must progress with the assessments as usual as a matter of urgency.
7. If there is still uncertainty as to whether on the balance of probabilities a person lacks mental capacity and/or it is in their best interest to be deprived of their liberty, an application will be made to the Court of Protection if appropriate.

New Urgent (with Standard) applications

1. Consider the circumstances of the urgent application, paying particular attention to any significant restrictions and P's objections.
2. Accept that the Care home will have provided themselves with urgent authorisation for 7 days in the usual way.
3. Gather information from all other sources as per the Code of Practice, including records of any other previous assessments (including capacity assessments for same or similar decisions)
4. Liaise with Care management teams and the care home to provide as much information as possible about the person and the circumstances of admission.
5. Have discussions with family members and other interested parties as per usual process for DoLS assessments.
6. Attempt to use any other means available for speaking with P E.g. Telephone/Skype etc.
7. Consider as a matter of professional judgement whether this information permits us to reach a decision to authorise. To include evidence that P's condition is degenerative and not likely to improve.
8. If sufficient information is available, we will authorise restrictions to the minimum extent considered necessary to protect, **and in event up to a maximum of 6 months**. If the authorisation is given for a 6-month period, then a review **must** be undertaken in month 3. If the restrictions on visiting care homes is lifted prior to the 3- or 6-month stage, then we must progress with the assessments as usual as a matter of urgency.
9. If there is still uncertainty as to whether on the balance of probabilities a person lacks mental capacity and/or it is in their best interest to be deprived of their liberty, an application will be made to the Court of Protection if appropriate.

Further standard applications – (Previous authorisation for 12 months)

1. Gather information from all other sources as per the Code of Practice, including records of any other previous assessments (including capacity assessments for same or similar decisions).

2. Confirm with previous s12 doctor (where possible) that existing assessments are still valid – See Regional Interim Form 4
3. Confirm with the care home and the RPR that there is no change in P's presentation or circumstances. Expired assessments could be used by the BIA, repeating the information in the DoLS forms and recording that they had confirmed by telephone with an identified individual at the placement that nothing has changed.
4. Have discussions with family members and other interested parties as per usual process for DoLS assessments.
5. If sufficient information is available, we will authorise restrictions to the minimum extent considered necessary to protect, and **in any event up to a maximum of 6 months**. If the authorisation is given for a 6-month period, then a review **must** be undertaken in month 3. If the restrictions on visiting care homes is lifted prior to the 3- or 6-month stage, then we must progress with the assessments as usual as a matter of urgency.
6. Attempt to use any other means available for speaking with P. E.g. Telephone/Skype etc.
7. **If sufficient information is available, SB will authorise restrictions to the minimum extent considered necessary to protect (up to a maximum of 12 months).**
8. Where there have been significant changes (such as an increase in dependency or restrictions) the BIAs could still complete renewal assessments by telephone, recording any significant new information in a Form 3 (Combined Best Interests Assessment) and identifying the circumstances which have prevented a visit
9. Consider as a matter of professional judgment whether this information permits SB to reach a decision to authorise. To include evidence that "P's" condition is degenerative and not likely to improve.
10. If P is now objecting, or objecting more strongly, then BIAs should highlight the strength of objection and consider advising on an application to the Court of Protection at the earliest opportunity
11. If there is still uncertainty as to whether on the balance of probabilities as to either whether a person lacks mental capacity and/or it is in their best interest to be deprived of their liberty an application will be made to the Court of Protection if appropriate.

Further standard applications (Previous authorisation less than 12 months)

1. Gather information from all other sources as per the Code of Practice, including records of any other previous assessments (including capacity assessments for same or similar decisions).
2. Confirm with previous s12 doctor (where possible) that existing assessments are still valid- see Regional Interim Form 4
3. Confirm with the care home and the RPR that there is no change in P's presentation or circumstances. Expired assessments could be used by the BIA, repeating the information in the DoLS forms and recording that they had confirmed by telephone with an identified individual at the placement that nothing has changed.
4. Have discussions with family members and other interested parties as per usual process for DoLS assessments.
5. Attempt to use any other means available for speaking with P. E.g. Telephone/Skype etc.

6. Where there have been significant changes (such as an increase in dependency or restrictions) the BIAs could still complete renewal assessments by telephone, recording any significant new information in a Form 3 (Combined Best Interests Assessment) and identifying the circumstances which have prevented a visit
7. Consider as a matter of professional judgement whether this information permits us to reach a decision to authorise. To include evidence that P's condition is degenerative and not likely to improve.
8. If sufficient information is available, the SB will authorise restrictions for **up to a maximum of 12 months from the date of the previous Form 4 assessment.**
9. If P is now objecting, or objecting more strongly, then BIAs should highlight the strength of objection and consider advising on an application to the Court of Protection at the earliest opportunity
10. If there is still uncertainty as to whether on the balance of probabilities as to either whether as person lacks mental capacity and/or it is in their best interest to be deprived of their liberty an application will be made to the Court of Protection if appropriate.

Cases currently in the Court of Protection Process

1. Seek guidance from the Court of Protection; request extension until further order.
2. Where case exceeds the 12-month period, we will follow the regional guidance set out above unless directed otherwise by the Judge.

...as ever, it is essential not to "dress-up" resource-based decisions in relation to deprivation of liberty – even in a time when resources may be stretched to the limit – as best interests decisions. This is only likely to generate s.21A challenges, which will be a further pressure on resources.

Where it is necessary to deviate from normal practices or procedures (as set out in the practical procedures above), it is essential to have clear systems in place for explaining why those deviations took place, how they might have impacted on the assessments and what steps were taken to mitigate those impacts. The suggested wording for BIAs and Supervisory Body signatories below is a good example of this. [\[THE COVID-19 PANDEMIC, THE CORONAVIRUS BILL AND THE MENTAL CAPACITY ACT 2005: published 25th March 2020\]](#)

BIA report: (Form 3)

"This assessment occurred at a time when public health measures had been put in place by HM Government to contain the spread of the COVID-19 virus. Professionals were being advised only to carry out essential visits to care homes.

When completing this assessment, I had to balance the need to protect X's Article 5 rights against the need to protect him/her from transmission of the virus. COVID-19 infection would have posed a grave risk to X in view of his/her underlying health conditions.

In view of these concerns, I therefore decided to base my assessment on existing documents and on the views of X's carers and family/friends rather than visiting him/her in person."

Supervisory Body Authorisation document: (Form 5)

“I note that the BIA decided not to assess X face to face in view of the risk of COVID-19 transmission. I agree that this is the best way of promoting X’s Article 5 rights whilst protecting him from serious illness. This authorisation will be reviewed when public health restrictions are lifted.”

The wording above has been agreed by the Mid and West Wales Regional Safeguarding Board - DoLS Partnership.

Appendix A – Regional Contact for Managing Authorities



Please use your individual organisation Logo on each letter also

Important Information update for Managing Authorities in relation to Deprivation of Liberty Safeguards during COVID-19 Outbreak

During the Covid-19 pandemic; as supervisory body we wanted to make contact with you to update you on our priorities as it stands on 2nd April 2020. We are awaiting further guidance from government, we will update you further once this has been received.

It is important the principles of the Mental Capacity Act and DoLS continue to be adhered to, we need to look at solutions creatively to reduce the risk of greater restrictions imposed than required. We need to ensure P remains centre of our decisions, maintaining the principles of the Mental Capacity Act remains important when completing the work we do.

Normal face to face assessments are to be restricted during this period; assessments will only be allocated for completion for those cases where it is deemed necessary and proportionate to assess. High priority cases are where the resident is actively objecting to the arrangements amounting to the deprivation. For example, a resident is expressing their wish to leave; significant physical restraint is being used or safeguarding concerns. All applications to the team must contain all restrictions in detail to use when triaging.

Due to the circumstances, authorisation periods will be a maximum of 6 months during this period with a view to review once government restrictions are lifted.

As managing authority, you must weigh up any visit requirements; it is strongly encouraged for technology to be used to keep in touch with P's support network ie phone and video calls to be used. All mental capacity assessments, best interest decisions and risk assessments must be completed where required; principles of the Mental Capacity Act 2005 have not been displaced and remain to be adhered to.

With DoLS legislation still being applied; the way in which we will be assessing is changing. We will require your assistance in gathering information on the resident and their support networks as well as diagnosis information available. Wherever possible evidence will be requested to be sent digitally to support assessments.

We understand work pressures are increasing and there will be situations where staff numbers are depleted, we appreciate all that you are doing.

Please note that there remains a duty to report any safeguarding concerns as per normal routes.

The DoLS team will remain the first point of contact for advice for all issues relating to new and existing DoLS authorisations. Please do not hesitate to contact us on local DoLS Number or email address.

Appendix B – COVID-19 Interim Form 3a and 4 doctor



Please insert your organisation also

COVID-19

Mid and West Wales Region

Interim DoLS Form 3a/4

For completion by S12 Doctor (Please complete part A or B)

| | | | | |
|---|--|---------------|---------|-------------|
| Person/ Case ID Number: | | | | |
| DEPRIVATION OF LIBERTY SAFEGUARDS <u>INTERIM</u> FORM 3a/4 | | | | |
| MENTAL CAPACITY, MENTAL HEALTH, and ELIGIBILITY ASSESSMENTS | | | | |
| This form is being completed in relation to the current COVID-19 situation and the embargoed visits to care homes/hospital wards | | | | |
| Full name of the person being assessed | | | | |
| Date of birth | | Est. Age | | |
| Name of the care home or hospital where the person is, or may become, deprived of liberty | | | | |
| A. PLEASE INDICATE BELOW THAT YOU HAVE REVIEWED THE EXISTING ASSESSMENTS BELOW AND CONFIRM <u>THERE ARE NO</u> CHANGES IN THE PERSENS CIRCUMSTANCES. | | | | |
| Mental Capacity | | Mental Health | | Eligibility |
| NAME OF DOCTOR: ORIGINAL ASSESSMENTS | | | DATE OF | |
| DOCTOR COMMENTS ON REVIEW: | | | | |
| DATE OF REVIEW: | | | | |
| I CONFIRM THAT ON REVIEW I RECOMMEND FURTHER AUTHORISATION UP TO A 6 MONTH PERIOD | | YES | NO | |

COVID-19 Mid and West Wales Region

Interim DoLS Form 3a/4

| B. PLEASE INDICATE BELOW THAT YOU HAVE REVIEWED THE EXISTING ASSESSMENTS BELOW AND CONFIRM <u>THERE ARE</u> CHANGES IN THE PERSONS CIRCUMSTANCES WHICH ARE REFLECTED IN THE COMMENTS BELOW. | | | | | |
|--|--|---------------|--|-------------|----|
| Mental Capacity* | | Mental Health | | Eligibility | |
| NAME OF DOCTOR ORININAL ASSESSMENTS | | | | DATE OF | |
| DOCTORS COMMENTS ON REVIEW: | | | | | |
| I CONFIRM THAT ON REVIEW I RECOMMEND FURTHER AUTHORISATION UP TO A 6 MONTH PERIOD | | | | YES | NO |

Each Supervisory Body signatory will need to decide on whether to authorise the deprivation based on the information above and any other information gathered as part of the interim arrangements. This will be detailed in the DoLS Form 5.

April 3rd 2020

Appendix C – Regional Contact to Paid RPRs



Please use your individual organisation Logo on each letter also

Important Information update for Paid RPRs

in relation to

Deprivation of Liberty Safeguards during COVID-19 Outbreak

During the Covid-19 pandemic; as supervisory body we wanted to make contact with you to update you on our priorities as it stands on 2nd April 2020. We are awaiting further guidance from government, we will update you further once this has been received.

It is important the principles of the Mental Capacity Act and DoLS continue to be adhered to, we need to look at solutions creatively to reduce the risk of greater restrictions imposed than required. We need to ensure P remains centre of our decisions, maintaining the principles of the Mental Capacity Act remains important when completing the work we do.

Normal face to face assessments are to be limited during this period; assessments will only be allocated for completion for those cases where it is deemed necessary and proportionate to assess. High priority cases are where the resident is actively objecting to the arrangements amounting to the deprivation. For example, a resident is expressing their wish to leave; significant physical restraint is being used or safeguarding concerns.

Relevant persons' representatives must weigh up any visit requirements; it would be encouraged for phone and video calls to be used for monitoring duties. High risk residents may need greater attention; it is important that any s21A challenges are not postponed during this period but are referred as per legislative process to maintain P's human rights.

Please note that there remains a duty to report any safeguarding concerns as per normal routes.

The DoLS team will remain the first point of contact for advice for all issues relating to new and existing DoLS authorisations. Please do not hesitate to contact us **on local DoLS Number or email address**.

Appendix D – Regional Contact to Unpaid RPRs



Please use your individual organisation Logo on each letter also

Important Information update for Unpaid RPRs

in relation to

Deprivation of Liberty Safeguards during COVID-19 Outbreak

During the Covid-19 pandemic; as supervisory body we wanted to make contact with you to update you on our priorities as it stands on 2nd April 2020. We are awaiting further guidance from government; we will update you further once this has been received.

We need to ensure that **NAME** remains centre of our decisions, maintaining the principles of the Mental Capacity Act remains important when completing the work we do.

Understandably, face to face visits to **NAME** will be limited, as relevant persons' representative you must weigh up any visit requirements; it would be encouraged for phone and video calls to be used for monitoring duties. It is important that any *section 21A* challenges are not postponed during this period but are referred as per legislative process to maintain **NAME** human rights. Please contact the team if you believe that a challenge to the DoLS is needed and you want the support of an Independent Mental Capacity Advocate to take this forward.

The DoLS team will remain the first point of contact for advice for all issues relating to new and existing DoLS authorisations. Please do not hesitate to contact us on **on local DoLS Number or email address** [should you wish to discuss anything.](#)