



Mental Capacity Act

(Northern Ireland) 2016

MCA DoLS Update – January 2022

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1. Trust MCA Contact Details

Belfast	MCABelfast@belfasttrust.hscni.net
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South Eastern	MCAsetrust@setrust.hscni.net
Southern	MCA.SHSCT@southerntrust.hscni.net
Western	MCA.WHSCT@westerntrust.hscni.net

2. Regional DoL Statistics (Inc. live updates) – Cumulative (Dec 2019 to Dec 2021)

Trust	Trust Panel DoL Applications	Extension Authorisations	Live TP / Extension Cases (at Dec 2021)	Short Term Detention Authorisations	Live Short Term Detentions (at Dec 2021)
Belfast	1236	398	417	193	1
Northern	1595	1436	820	329	6
South Eastern	1840	874	776	285	2
Southern	1235	537	706	324	11
Western	1131	347	492	41	2
Total	7037	3592	3211	1172	22

3. Regional Legacy Cases (comparison from May 2021)

Trust	Outstanding Legacy Cases (end of May 2021)	Outstanding Legacy Cases (end of December 2021)*
Belfast	800	0
Northern	0	0
South Eastern	391	42
Southern	1056	192
Western	408	130
Total	2690	364

* Trusts have confirmed that emergency measures are in place for all outstanding legacy cases.

4. Training

The Department delivered a live masterclass Q&A session on 18 January 2022 with Alex Ruck Keene, an experienced barrister, writer and educator. His practice focuses on mental capacity and mental health law, and he provided advice on how similar issues are dealt with in England and Wales. This information will be used to inform decisions as we continue implementation in NI.

The Department offers mandatory DoLS training on its website at: [Mental Capacity Act Training | Department of Health \(health-ni.gov.uk\)](https://www.health-ni.gov.uk/mental-capacity-act-training)

Trusts can continue to provide their own training as set out in the Maintaining Competence and Confidence paper [\[link\]](#).

5. Latest Developments

Update on LPS in England - There has been a delay in implementing the new Liberty Protection Safeguards (LPS) in England, and this will not take place in April 2022, as originally planned.

Mandatory Training – work continues to update the Department’s mandatory DoLS online training courses. It is anticipated that it will be available on the DoH website early in 2022.

The Department’s MCA team can be contacted at: mcaimplementation@health-ni.gov.uk
Additional information is available at www.health-ni.gov.uk/mca



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The following questions were asked at the MCA Q&A webinar on 18 January 2022. Additional FAQs can be found at [Mental Capacity Act FAQs | Department of Health \(health-ni.gov.uk\)](https://www.health-ni.gov.uk/mental-capacity-act-faqs) which is updated regularly. If you have any queries you would like addressed please contact the MCA lead in your Trust.

Q - What is or is not a DoL? Not all deprivation of liberty scenarios are straightforward. What are the most common situations you have come across that are not treated as deprivations of liberty when they should be? Or are treated as deprivations of liberty when they shouldn't be?

A - Neither the English nor Northern Ireland Mental Capacity Acts have a statutory definition of DoL. Jersey tried to statutorily define it, which has resulted in some real difficulties. Two scenarios not commonly recognised as DoLS - (i) Where people don't want a DoL to take place and; (ii) where people are confined and can't consent to deprivation - that is still a DoL regardless if Patient is 'happy' to be confined.

DoL when it shouldn't be: 'carve-out' from ECHR Art. 5 - In instances where immediate lifesaving treatment is required, the mere fact that you are unable to consent, for example in hospital following a car crash doesn't necessarily equate to DoL. The Ferreira case and judgement apply here. There is a guidance note on the faculty of intensive care medicine (FICM) website [here] on the 'carve-out', which was produced in part to avoid clogging up the system - a DoL is often done in these situations out of an abundance of caution, which, if not necessary, creates unnecessary burdens for all concerned.

Q - Applying for DoL in borderline cases - which settings do you feel are the most difficult when it comes to decisions as to whether DoLS applies or not? If in doubt in such borderline settings or cases, should an application for a DoL authorisation be made or not, and why?

A - Ferreira and Re D case from Supreme Court may have originated in ICU but this did not mean that it should apply only in ICU. As a rule of thumb, and noting the 'carve-out' issue discussed immediately above, it is sensible to apply DoLS if in doubt; if you are not giving people the benefit of doubt then they will be potentially denied safeguards that should be applied. DoLS are not a power to detain but rather a recognition that safeguards are required - it is very helpful that this is so clearly recognised in the NI MCA Code of Practice.

Q - Staff confidence when depriving someone of liberty - what advice would you give to anyone who is nervous or hesitant about being asked to deprive someone of their liberty? What advice would you give to management in such situations?

A - Key to hesitancy is perhaps because of fundamental linguistic problem - deprivation of liberty sounds like a bad thing. But it isn't necessarily. If they cross the threshold for requiring treatment or care in a situation of confinement, then there should be a framework to enable this and protect the persons' rights. To reduce nervousness MCA 'champions' in each institution should encourage all to be confident and competent to apply DoLS as and when required.

Useful legal case references

A Local Authority v JB – Case re Capacity / Support principle

https://www.39essex.com/cop_cases/ch-v-metropolitan-council/ - Capacity and sex case

https://www.39essex.com/cop_cases/re-rd-ors-duties-powers-rprs-s-39d-imcas/ - Capacity to appeal case

https://www.39essex.com/cop_cases/mh-v-united-kingdom/ - MHRT and referrals of those who have impaired decision making case

LB Hillingdon v Neary Case – Consideration of Article 8 Human Rights

https://www.39essex.com/cop_cases/lb-haringey-v-emile/ - Technical vs substantive deprivation of liberty case

https://www.39essex.com/cop_cases/westminster-city-council-v-manuela-sykes/ - Advanced decision making case

https://www.39essex.com/cop_cases/n-v-accg/ - Case considering advanced decision making/BI