



Mental Capacity Act

(Northern Ireland) 2016

MCA DoLS Update – March 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 Feb 2022)

Trust	Trust Panel DoL Applications	Extension Authorisations	Live TP / Extension Cases (at Feb 2022)	Short Term Detention Authorisations	Live Short Term Detentions (at Feb 2022)
Belfast	1770	475	405	169	1
Northern	1635	1612	805	368	6
South Eastern	1938	1053	789	301	5
Southern	1328	668	729	330	2
Western	1254	406	931	45	2
Total	7925	4214	3659	1213	16

3. Regional Legacy Cases (comparison from May 2021)

Trust	Outstanding Legacy Cases (end of May 2021)	Outstanding Legacy Cases (end of February 2022)*
Belfast	800	0
Northern	0	0
South Eastern	391	6
Southern	1056	11
Western	408	44
Total	2690	61

* Trusts have confirmed that emergency measures are in place for all outstanding legacy care home cases and that they have plans in place to ensure all legacy cases will be processed for authorisation by 31 March 2022.

4. Training

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). DoH has provided an additional £4k to each Trust to further support them with their training and support of staff.

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 by mid 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) which is updated regularly. If you have any queries you would like addressed please contact the MCA lead in your Trust.

Q - Offering P practicable help and support to make a decision - Whilst the MCA provides a substitute decision making framework, it is fundamentally a supported decision making statute. Sections 5 and 6 note that all practicable help and support must be provided to a person before that person is deemed to lack capacity. Can you talk about the importance of this Principle? Have you any experience of cases where P has been prematurely signed off as lacking capacity without all practicable help and support having been offered?

A - As a matter of law, we are bound in both jurisdictions to do all we can to aid the decision making process for P. This support principle is hugely important and the Review Tribunal should be pushing the Trust to ensure all possible support has been provided (The Tribunal itself is under the same support obligation). MCA (NI) provides concrete detail on steps to take to ensure this is completed fully before determining that P cannot make a decision for him/herself on the matter.

Q - Fluctuating capacity - Where a DoL is felt to be in P's best interests in order to protect him/her from serious harm but P has fluctuating capacity, should the application still be made? Should the Trust Panel authorise the DoL?

A - This is a challenging issue both in practice and in law – the challenge is time specific legislation verses the reality of a situation. A good rule of thumb is that, if over the likely length of the authorisation, the person will more often than not lack the relevant capacity, then they should be kept within the scope of the protections as it provides them with rights. However, in cases of fluctuating capacity, a short period between re-evaluation is crucial to ensure the capacity is monitored.

Q - DoL capacity v Review Tribunal capacity - In the NI MCA, when seeking to apply to a Trust Panel for a DoL to be authorised, a formal assessment of P's capacity in relation to the DoL is carried out (NI Form 1). As part of this application, P is also assessed with regard to whether he/she has or lacks capacity in relation to appealing the DoL with the Review Tribunal (NI Form 7). In most cases, the level of decision making capacity in relation to the appeal is going to be lower than for the DoL itself. However, we are having difficulties as to the level at which this appeal capacity should be drawn. Does the English MCA provide for a separate assessment of capacity regarding appealing a DoL? Are there any rules of thumb we could apply?

A - Two assessments - understanding the right to appeal the DoL verses capacity in relation to DoL. Some useful guidance can be found in the English case of Re RD. It is important to remember that it is irrelevant if P doesn't have a chance of being released with regards to their right to appeal. Art 5.4 ECHR gives a right to challenge your detention, irrespective of your prospects of success, and if you were denied this it would contradict the ECHR. NI has a robust system where the AG provides oversight and thinking on this subject for those who are deemed to lack capacity on appealing the DoL. Number of discharges may not be the most appropriate measurement to refine the process around form 7.

Q - Purpose of the medical report - What is the purpose of the medical report in the DoLS process?

A - NI system must comply with ECHR Article 5; the key element for DoLS is that Article 5 allows for the "lawful detention... of persons of unsound mind". It is the medical report which provides the necessary clinical evidence.

Mental Capacity Act – Departmental Update

On Wednesday 16th March 2022 the Mental Capacity Act Unit (MCAU) held a joint workshop with Department of Justice, Trust and Attorney General Office colleagues to review the statutory processes of DoLS. The aim of this event was to ascertain and realise potential efficiency savings within the DoLS processes with a focus towards the work of the Review Tribunal and streamlining of the overall process.

MCAU officials are working to explore next phase implementation of the Act. As part of this process, the Department will scope the possible options for potential next phase of implementation and associated timelines. Whilst this scoping exercise and Departmental considerations are underway it must be understood that budget limitations will ultimately dictate the possibilities for this crucial area of work. The Department is keen to engage and progress this work through a co-productive approach with all key stakeholders, including service users and their carers.