



Mental Capacity Act

(Northern Ireland) 2016

MCA DoLS Update – May 2022

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1. Trust MCA Contact Details

| | |
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| Belfast | MCABelfast@belfasttrust.hscni.net |
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| South Eastern | MCAsetrust@setrust.hscni.net |
| Southern | MCA.SHSC@southerntrust.hscni.net |
| Western | MCA.WHSC@westerntrust.hscni.net |

2. Regional DoL Statistics (Inc. live updates) – Cumulative (Dec 2019 to May 2022)

| Trust | Trust Panel DoL Applications | Extension Authorisations | Live TP / Extension Cases (at Apr 2022) | Short Term Detention Authorisations | Live Short Term Detentions (at Apr 2022) |
|---------------|------------------------------|--------------------------|---|-------------------------------------|--|
| Belfast | 1305 | 571 | 373 | 113 | 0 |
| Northern | 1710 | 1764 | 831 | 365 | 5 |
| South Eastern | 2042 | 1186 | 775 | 470 | 1 |
| Southern | 1513 | 785 | 727 | 1713 | 16 |
| Western | 1350 | 490 | 570 | 177 | 0 |
| Total | 7920 | 4796 | 3276 | 2838 | 22 |

3. Regional Legacy Cases (comparison from May 2021)

| Trust | Outstanding Legacy Cases (end of May 2021) | Outstanding Legacy Cases (end of April 2022)* |
|---------------|--|---|
| Belfast | 800 | 0 |
| Northern | 0 | 0 |
| South Eastern | 391 | 0 |
| Southern | 1056 | 0 |
| Western | 408 | 0 |
| Total | 2690 | 0 |

* All legacy cases were processed for authorisation by 31 March 2022. The Department expresses its sincere thanks to all whose excellent work and commitment has led to this success, during such challenging times.

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 undertaken a review of these training packages, considering suggestions for enhancement brought forward by a Trust/HSCB led Training Group. DoH has provided feedback to the group and is working towards production of revised training packages as soon as possible.

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

5. Latest Developments

Rapid Literature Review – The Department has commissioned the services of Professor Gavin Davidson (QUB) to review key policy, research and grey literature from Northern Ireland and other jurisdictions to help inform considerations of future Mental Capacity Act implementation.

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 - Illness - A patient with dementia and delirium has been admitted to hospital and the sepsis is the reason used for the STD Authorisation. The patient recovers physically and sepsis is resolved. A DoL authorisation is requested but P no longer needs to be in hospital for examination (or examination followed by treatment or care) for the original illness (the sepsis) but does need to remain for MDT assessment in relation to their needs on discharge due to the underlying dementia. Can the dementia be referred to as the 'illness' for which P needs to remain for further assessment?

A - In relation to short-term detentions, the MCA (NI) refers to 'an illness' rather than 'the illness' meaning the illness that caused the hospital admission does not need to be an illness related to P's capacity to make decisions - underpinning reason for detention may have changed but the process is still appropriate as long as the paperwork is up to date and accurate. If the detention is because 'I think it's safer to keep P here' this is not appropriate

Q - Delayed discharges - In a number of cases, P is in a placement or hospital short-term while comprehensive care planning is being carried out (e.g. a move to a more appropriate care home or a discharge from hospital). Can we say it is in P's best interest to be deprived of their liberty in that short-term setting? What factors should we consider?

A - Two factors; (i) clinical or (ii) NI legal - trade-off between discharging P vs would they be better off in this setting for as short a period of time as possible. The starting point should be to decide what is best for P - bearing in mind that by keeping them in hospital, we may be exposing them to more risk i.e. infection risk in the setting.

Q - Use of force - What factors are used to determine proportionality and level of force that can be used and how does this need to be recorded to provide protection to the staff who are using force to ensure the patient's safety?

A - An advantage of NI MCA is that section 26 details the requirements to put in place to bring about transfer to a place of deprivation of liberty, but it is important not to use these improperly. It is important not to lose sight of bigger picture - are we actually doing the right thing in trying to bring about the move of the person to a situation of deprivation of liberty? OR are we being too risk averse, and is that risk aversion leading to us thinking we have to use force? In other words, and thinking about Article 8 ECHR (right to private and family life, and right to autonomy): do we really need to take these steps? If we do, then it may be necessary to obtain authority from a court to justify the steps (see the NI case of [AH & SCT v AK](#)). The courts will want to know about contingency planning to ensure that the least restrictive steps are taken to bring about the transfer, and remember that the police being deployed in these instances is not always best/most appropriate.

Q - DoLS in family homes - Does NI DoLS apply in a private family home where all the criteria for a DoL are met?

A - Yes, if appropriate care and treatment can be provided there.

Mental Capacity Act - Departmental Update

Following the Mental Capacity Act Unit (MCAU) joint workshop with Department of Justice, Trust and Attorney General Office colleagues to review the statutory processes of DoLS (16th March 2022), officials have now developed an agreed action plan. These actions may lead to potential efficiency savings within the DoLS processes and MCAU officials are collaborating with all key partners to test, implement and review these proposals, at pace.

MCAU officials continue to work to explore future implementation of the Act. The Department will engage with all key partners once this exploratory work is undertaken to scope out any future programmes of work, working within the principles of co-production.

The Department has also recently sourced some 'trendy' new MCA promotional materials which will shortly be distributed to Implementation Leads for dissemination - please do grab some while they last!