

**NEW UPDATED TRAINING PATHWAY FOR THE MENTAL CAPACITY ACT &
DoLS;****Mental Capacity Act & DoLS Training**

Gloucestershire Safeguarding Adults Board have a recommended Multi-agency training pathway for all organisations and partners within Gloucestershire. The courses are organised by training levels 1 to 3 and have been tailored to match the intended audience.

For more information about the courses available and how to book, please visit

<https://www.gloucestershire.gov.uk/health-and-social-care/training-for-health-and-social-care-professionals/multi-agency-training/mental-capacity-act-2005-deprivation-of-liberty-safeguards-training/>

CHANGE TO DoLS!!!!!!

The legislation to replace DoLS: 'The Mental Capacity Amendment Act 2019' became law on 16 May 2019. This means the DoLS processes will be replaced by the 'Liberty Protection Safeguards.

Timeframe: the Liberty Protection Safeguards will come into force 1st October 2020. A new Code of Practice will be introduced –

Some key changes

The Liberty Protection Safeguards will:

- Include 16 and 17-year-olds
- Have a new role of Approved Mental Capacity Professional (AMCP) which will replace the Best Interest Assessor (BIA)
- Apply to all care settings, including supported accommodation, shared lives and people's own homes
- Will re-introduce the NHS as a Responsible Body (RB): the RB will need: To arrange / commission the appropriate assessments

Some things will stay the same, for example:

- LPS will authorise a deprivation of liberty but not care and treatment (just like DoLS).
- The definition of deprivation of liberty will remain the same as the 'acid test'

WHO IS SIMON THOMASON?

Simon Thomason is the Mental Capacity Act Governance Manager for Gloucestershire.

Simon is available for advice/guidance on matters relating to the MCA and is the author of the revised countywide policy.

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See overleaf for guidance from Simon on the communication element of the capacity assessment

What does it mean to “communicate the decision” in a Mental Capacity Act assessment?

When assessing a person’s capacity for a specific decision one of the questions is whether they can communicate their decision. This is part of the functional test for capacity. You are assessing whether the person can understand, retain and weigh up relevant information and then can they communicate their decision.

There are two ways the word communicate is being used in the MCA. One is the general sense of communication. How you and the person you are assessing are sharing information, whether by words, signing or other ways. Mr Justice Baker said that a capacity assessment is a conversation. If the person cannot communicate at all then you would conclude that they lack capacity for that decision.

The other way communicate is used is asking the question “can the person communicate the decision”. This is specific to the decision. If the person cannot understand, retain or weigh up relevant information regarding the decision, they lack capacity for that decision. How then can they communicate the decision if they cannot understand the information needed to make that decision? However they are able to communicate (in the wider sense) with you and can tell you what they want. This causes difficulties for practitioners in how they record the question on communication the decision.

If a capacity assessment is a conversation, communication (in the wider sense) is necessary to carry out the capacity assessment. I use the example of Korsakoff’s patients in residential care – they generally have a short term memory deficiency and understanding and retaining relevant information is a problem, but my experience has been they can be clear that they want to return home. That does not mean that they can communicate the decision (which will be about future care), but that they can communicate a wish i.e. to go home. I can’t think of an example where a person cannot understand, retain or weigh up relevant information, but can communicate the decision.

Just because P can communicate in a more general sense e.g. hold a conversation, does not necessarily mean that they can communicate the specific decision in question. Practitioners need to be clear that the communication question in the capacity assessment relates to communicating the specific decision.

One option would be to write in the “communication” question box something like “P was able to communicate verbally (or by whatever other means they use), however they were not able to communicate the decision as it relates to this capacity assessment”.