

Title: **BEST INTEREST ASSESSOR POLICY**

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Applicability

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1 Purpose

- 1.1 Within the DoLS framework it is a requirement that six different assessments are completed by at least two different assessors, and the qualifying criteria met for each assessment. One of these assessors must be a Best Interest Assessor, who may undertake the following assessments:
- The Best Interest Assessments
 - The Age Assessment
 - The No Refusals Assessment
 - The Mental Capacity Assessment
- 1.2 The aim of this policy is to set out how Torbay and South Devon NHS Foundation Trust (TSDFT) will execute its delegated responsibility to:
- Ensure that sufficient assessors are available to meet the needs of the service.
 - Provide assurance that each assessor has the skills, experience, qualifications and training required to perform the function effectively.
 - Provide assurance that completed assessments are of a high quality and reflect the empowering ethos of the Mental Capacity Act 2005.
 - Provide assurance that completed assessments reflect any relevant national development and any relevant developing case law.

2 Introduction

- 2.1 The Deprivation of Liberty Safeguards (DoLS) provides a legal protection for those vulnerable people who are or may become deprived of their liberty within the meaning of Article 5 of the European Convention on Human Rights in a hospital or care home, whether placed under public or private arrangements. They do not apply to people detained under the Mental Health Act 1983.
- 2.2 The safeguards exist to provide a proper legal process and suitable protection in those circumstances where deprivation of liberty appears to be unavoidable, in a person's best interest.
- 2.3 The Safeguards provide for a deprivation of liberty to be made lawful through Standard or Urgent authorisation processes. These processes are designed to prevent arbitrary decisions to deprive a person of their liberty and give a right to challenge deprivation of liberty authorisations.
- 2.4 Within Torbay, the Deprivation of Liberty Safeguards Operational function is managed by an agreement made under section 75 of National Health Services Act 2006, between Torbay Council and Torbay and Southern Devon Health and Care NHS Trust. This means that the DoLS function is managed by the Safeguarding Adult Team situated within Torbay and Southern Devon Health and Care NHS Trust.

3 Roles and Responsibilities

- 3.1 A transparent and effective governance pathway is essential in setting the mechanisms, processes and relations by which the DoLS, and specifically the role of the BIA, will be controlled and directed within the Organization.
- 3.2 The BIA Governance pathway will be as follows;
 - In the first instance, Assessors act as individual professionals and are personally accountable for their decisions, and to their professional code of conduct. The Safeguarding Adult Team or Supervisory Body must not indicate or seek to influence their decisions.
 - The day to day management of all Best Interest Assessors will be the responsibility of the MCA/DoLS Lead Practitioner situated within Safeguarding Adult Team. The MCA/DoLS Lead Practitioner will also act in the role of Lead BIA. The Lead BIA will report to and receive monthly supervision from the Safeguarding Adult Operational Manager.
 - The Safeguarding Adult Operational Manager will report to and receive supervision from the Associate Director of Adult Social Care.
 - Both the Safeguarding Adult Operational Lead and the Associate Director of Adult Social Care will report to the Safeguarding Adult Board, the Integrated Safeguarding Committee and the Executive Boards for Torbay and Southern Devon Health and Care NHS Trust
 - .

3.3 The Lead Best Interest Assessor will be responsible for the following:

- Representation at the Southwest Peninsular Local Implementation network.
- Representation at the Mental Capacity Act 2005 Subgroup to the Safeguarding Adult Board.
- Representation upon the joint Devon and Torbay DoLS Peer Audit panel.
- The dissemination of national and local development information at a Strategic and Operational level.
- The dissemination of relevant case law at a Strategic and Operational level.
- Maintaining an up to date BIA register of qualification and fitness to practice.
- The development of an on -going Best Interest Assessor rota.
- The commissioning of Assessors where required.
- The provision of face to face supervision for each Assessor.
- The provision BIA support and guidance during assessment process.
- The development of guidance tools to support good practice and quality assurance.
- The development of Supervisory Body paperwork in preparation for signing.
- The management of Operational activity.
- The immediate escalation of identified risk to both Line and Senior Managers.

3.4 The Best Interest Assessor will be responsible for the following:

- To establish whether a deprivation of Liberty is occurring or is going to occur and, if so whether:
 - It is in the best interest of the relevant person to be deprived of their liberty
 - It is necessary for them to be deprived of their liberty in order to prevent harm to themselves.
 - Deprivation of liberty is a proportionate response to the likelihood of the relevant person suffering harm and the seriousness of that harm.
- Assessing what is in the best interest of a relevant person and to make recommendations to the Supervisory Body.
- Demonstrate a sound knowledge of the Mental Capacity Act and Deprivation of liberty Safeguards codes of practice and any developing case law or legislation.
- Providing relevant evidenced based and concise assessments/reports to the Supervisory Body within agreed timescales.
- Advising and supporting Managing Authorities, Relevant Person/ Family/Carers and other health and social care Professionals on MCA and DoLS related matters.
- Protecting the rights and promoting the interests of the Relevant Person and Family/Carers.
- Striving to establish rapport and maintaining the trust and confidence of the Relevant Person and their Family/Carers.
- Demonstrating a person centred approach at all times within any assessment and decision making process.
- Demonstrating a sound knowledge and understanding of the Human Rights Act and how this applies in practice.

- Demonstrating a sound knowledge and understanding of the interface and complexities between the Mental Capacity Act, Deprivation of Liberty Safeguards and the Mental Health Act and how this applies to practice.
- Collating and assessing complex and often sensitive information.
- Assessing risk, the seriousness of that risk, and the probability of that risk occurring, to ensure any decisions made are a proportionate response to that risk, the less restrictive option available and in the Relevant Person's best interest.
- Providing relevant, evidence based and concise reports/assessments within the timescale directed by the Lead Best Interest Assessor on behalf of the Supervisory Body.
- Liaising with, and paying regard to any report provided by an Independent Mental Capacity Advocate as part of the best interest decision making process.
- Liaising with all significant people who have an interest in the wellbeing of the Relevant Person to seek their views and opinions, as part of the best interest decision making process.
- Liaising with, and paying regard to any assessments completed by a Mental Health Assessor, to seek a professional opinion as to how any proposed deprivation will affect the Relevant Person's mental health, as part of the best interest decision making process.

- Liaising with all significant health and social care professionals involved in the care and or treatment of the Relevant Person, to seek their professional views and opinions as part of the best interest decision making process.
- Escalate any concerns indicating a vulnerable person may be at risk of abuse, harm or exploitation, to the Lead Best Interest Assessor and the Single Point of Contact for Safeguarding Adults.
- Managing challenging and sensitive issues with clarity and professionalism.
- Working in a manner congruent with the presumption of capacity
- Taking all practical steps to help someone make a decision
- Balancing a person's rights to autonomy and self-determination with their right to safety, and respond proportionately
- Making informed independent best interest decisions within the context of a Deprivation of Liberty Safeguards (DoLS) assessment.

4. Training and Supervision

- 4.1 To ensure on-going appropriate numbers of Assessors are available to meet the demands of the DoLS Service, the role of the Best Interest Assessor will be incorporated within the wider MCA and DoLS training strategy.
- 4.2 In England and Wales the Best Interest Assessment must be undertaken by an AMHP, a Social worker, an Occupational Therapist, Registered Nurse or a Chartered Psychologist. Therefore, BIA training opportunities will only be made available to those practitioners with a professional qualification in one of these disciplines. The regulations specify the following conditions must be met:
- The individual practitioner is not suspended from the register or list relevant to the person's profession.
 - The individual practitioner must have appropriate professional registration.
 - The individual practitioner must have a minimum of 2 years post qualifying experience.
 - The individual must have successfully completed training that has been approved by the Secretary of State to be Best Interest Assessor.
 - Evidence that except in the 12 months period beginning with the date the person has successfully completed the approved training, has, in the 12 months prior to selection completed further training relevant to their role as a Best Interest Assessor.
 - Has the skills necessary to obtain, evaluate, and analyse complex evidence and differing views and to weigh them appropriately in decision making.
- 4.3 The Organisation will discharge its statutory obligations for the provision of adequate numbers of suitably qualified and experienced practitioners by offering places in line with the needs of the service on suitably accredited training courses.
- 4.4 Applications will be encouraged from a range of eligible professionals and diverse practice settings across the Organisation.
- 4.5 Practitioners who express an interest in undertaking BIA training will be required to provide written agreement from their Line Manager to be released from existing duties for the purpose of:
- Undertaking initial BIA training
 - Upon successful completion of BIA training to participate in the BIA Rota.

- Attendance at the mandatory legal update day.
 - Participation in one to one BIA supervision.
- 4.6. The final decision to fund a Practitioner to undertake BIA training will lie with the Associate Director of Adult Social Care and the Operational lead for Safeguarding Adults and will depend on:
- Evidence of professional registration
 - Evidence of two years post qualifying experience
 - Evidence of proven ability to obtain, evaluate and analyse complex evidence and differing views and to weigh them appropriately in decision making
 - Impact upon the individuals existing role within the Organisation
 - Agreement from the individuals Line Manager to be released from existing roles for the purpose of training and subsequent BIA duties.
- 4.7 The funding for each applicant will be sought from the Safeguarding Adult Budget, in consultation with the Organisations Accountant.
- 4.8 The number of active BIA's will be monitored on an on -going basis by the Lead BIA. Where risk is identified the Lead BIA will report immediately in writing (email/position report) to the Safeguarding Adult Operational Lead and the Associate Director of Adult Social Care.
- 4.9 A Review of the number of Best Interest Assessors will be undertaken by the Lead BIA and the Safeguarding Adult Operational Lead, on an annual basis, or sooner if required. The review will be undertaken in time to inform the Associate Director of Adult Social Care of any identified need, prior to the planning of the Social Care budget allocation for the forthcoming financial year, to ensure any required consideration within it.
- 4.10 It will be a mandatory requirement of each BIA to attend a legal update day within each twelve month period of post qualification to enable their continuing practice with the Organisation, which will count towards the agreed 6-8 hours per annum training. Where possible, the BIA legal update day will be run jointly with the Mental Health Assessors to enhance the learning experience for all Assessors.
- 4.11 In addition, the Lead BIA will facilitate quarterly BIA peer groups which each BIA will be encouraged to attend, which will also count toward the agreed 6-8 hours per annum training.
- 4.12 It is imperative that each BIA is able to demonstrate the necessary skills and competencies required to undertake the role on behalf of the Organisation in protecting vulnerable people lacking the mental capacity to consent to their residence and care arrangements.
- 4.13 To form part of a quality assurance framework, The Safeguarding Adult Team will implement the 'Best Interest Assessor Capabilities Framework' developed by the College of Social Work and agreed by the Government in 2012. (See Appendix 1)
- 4.14 The Lead BIA will be responsible for measuring the quality of assessment and individual knowledge and skill against the BIA Capabilities framework, as a benchmarking process within one to one Supervision.

4.15 BIA Supervision will follow the following process:

- The Lead BIA will scrutinise assessments completed by the BIA and measure the quality of each against the Capabilities Framework.
- The Lead BIA will request from the BIA any evidence to support their attainment/achievement in each key area. Evidence may also include any additional work undertaken outside of the BIA role, but which remains commensurate with the BIA role. For example: any examples of operational work undertaken, courses/conferences attended/completed, written reflective practice which may form part of their own professional registration portfolio.
- The Lead BIA will highlight all areas of good practice.
- The Lead BIA will highlight areas of identified weakness (measured against the capabilities framework) requiring improvement, and together with the BIA identify and agree a SMART action plan.

4.16 Supervision and any action plan developed will be recorded within a specific BIA supervision sheet (see Appendix 2). A copy will be given to the BIA, the original stored within the BIA's personal supervision file. The Supervision file will be stored in a secure cabinet in the Safeguarding Adult Office.

5. Best Interest Assessor's returning to practice

5.1 Any practitioner who wishes to return to Best Interest Assessor duty, and has previously completed Best Interest Assessor training, but which has now lapsed and no longer meets the regulations should:

- Provide written evidence from their Line Manager to confirm agreement that they can be released from their existing duties within the Organisation for the purpose of undertaking BIA Duties.
- Provide evidence of the BIA training they have previously undertaken and with which approved Organisation.
- Provide evidence of professional registration.
- Provide evidence of any previous legal updates completed.

5.2 The returning Practitioner will not be permitted to undertake BIA duty until the Lead BIA has;

- Arranged a legal update and the Practitioner has successfully completed it
- Has made all necessary checks and is satisfied that the Practitioner is now legally compliant and able to practice in the BIA role.

6. Best Interest Assessor's ceasing to act in the role.

6.1 TSDFT have a duty to ensure that it has access to enough appropriately trained and skilled Best Interest Assessors at all times. So as not to place the Trust at risk of not being able to fulfil the delegated function Best Interest Assessors who wish to cease acting in the role should as far as possible:

- Inform their line Manager and the Lead BIA as soon as possible
- Where possible provide a 3 month period of notice, or period of current allocated rota weeks.

7. The Best Interest Assessor Rota

- 7.1 It is the responsibility of the Lead BIA to develop an on-going BIA rota which is disseminated to the BIA Cohort in a timely fashion.
- 7.2 There is an expectation that each BIA will participate in the rota and provide the necessary support by means of identified rota weeks.
- 7.3 The Lead BIA will aim to share assessments demand on an equitable basis amongst the BIA cohort.
- 7.4 The lead BIA will develop the rota in the following way:
- The MCA/DoLS Administrator will contact the BIA cohort members 6 weeks prior to the commencement of the rota being developed.
 - The MCA/DoLS Administrator will request from each BIA any known weeks that they will be unavailable, for example in circumstances where Annual Leave has been booked, and will further set a date by which notifications must be returned.
 - The MCA/DoLS Administrator will, on receipt of the above information, develop a rota that will acknowledge the number of active BIA'S and allocate each BIA 2 weeks upon it, For example, where there are 10 active BIA''s the rota will be developed over a period of 20 weeks and each BIA will be allocated 2 weeks.
 - On completion of the rota the MCA/DoLS Administrator will disseminate it out to the BIA Cohort within 6 weeks of its commencement date. In addition, a copy of the rota will be stored on the DoLS H:/ drive.
 - The BIA rota will also contain the contact details, both email and telephone of all cohort members.
- 7.5 In circumstances where it becomes necessary for a BIA to change their allocated rota week, the responsibly for doing so will lie with the BIA. This can be achieved by the BIA making direct contact with other BIA'S and arranging a swop.
- 7.6 It will be the responsibility of the BIA to ensure that their original BIA rota week is appropriately covered by another and to inform the Lead BIA or the MCA/DoLS Administrator as soon as possible. Both the Lead BIA and the MCA/DoLS Administrator can be contacted on:

Email: dolstorbay@nhs.net
Tel: 01803 219832

8. The register of Best Interest Assessors

- 8.1 A key function of the Learning and Development Team will be to ensure that all commissioned Assessors, whether employed by the Organisation or commissioned on an independent basis, are legally compliant with the regulations and able to undertake assessments without placing the Organisations at risk. To satisfy this requirement within each twelve month period (or earlier if required) the Lead Learning and Development Officer will:
- Update the BIA register accordingly and store confidential information securely.
 - Check each BIA continues to be registered with their professional body,

- Check each BIA is undertaking the expected regionally agreed attendance of 6-8 hours per annum training.
- Check each BIA has received a minimum of one face to face supervision session.
- Provide all relevant information to the Lead BIA.

9. Best Interest Assessor Insurance

- 9.1 Regulation 3 of the Mental Capacity Act 2005 currently sets out that one of the requirements for a person to be eligible to carry out a Mental Capacity Act Deprivation of Liberty Safeguards assessment is that they must be insured in respect of any liabilities arising in connection with carrying out the assessment.
- 9.2 As an integrated health and social care Trust, TSDFT have two insurance policies for clinical, employee and public liability. For NHS activities cover is provided by NHS Litigation and for Social Care activities cover is provided by Zurich.
- 9.3 Any independent BIA commissioned by the Organisation to undertake an assessment will be required to provide the following information prior to any activity:
- Evidence of initial BIA qualification by an approved source.
 - Evidence of professional registration.
 - Evidence of appropriate insurance cover.
 - Evidence of professional development undertaken within the previous 12 months.

10. Complaints

- 10.1 In circumstances where a complaint arises as a consequence of any assessment completed by Best Interest Assessor on behalf of the Organisation, the lead Best Interest Assessor will undertake the following;
- Clarify the nature of the complaint directly with the complainant
 - Where possible seek to find an immediate solution, in consultation with both the Best Interest Assessor and the Complainant.
 - Where the complaint cannot be resolved the Lead Best Interest Assessor will immediately inform the Safeguarding Adult Operational Lead and where necessary seek legal advice.
 - In circumstances where a Best Interest Assessor's competency to practice has been found to be lacking, the Lead Best Interest Assessor will provide immediate Supervision and the development of an Improvement Action Plan.
 - The Lead Best Interest Assessor will also inform the Line Manager.

11. Monitoring and Auditing

- 11.1 In addition, the Lead BIA will be responsible for participating in and where required Chairing the Devon and Torbay DoLS Joint Peer Audit. Within the Audit a Best Interest Assessment will be picked at random and anonymised. The quality of the assessment will be scrutinised by a Panel of experts via an audit tool.

The Panel members will consist of following representatives:

- Devon and Torbay Local Authority Legal Teams
- Devon and Torbay Supervisory Body Signatories
- The Lead Independent Mental Capacity Advocate (IMCA) for the Devon and Torbay IMCA Service
- The Lead Section 12 Medic for the joint Devon and Torbay Mental Health Assessor Service.
- Lead BIA's within Devon and Torbay

11.2 Following each Audit the Lead BIA will develop an outcomes report that will be presented to the Mental Capacity Act Sub Group to the Safeguarding Adult Board, the Safeguarding Adult Board and the Independent Safeguarding Committee.

11.3 The Lead BIA will be responsible for disseminating all learning outcomes to the BIA cohort, and in the development of any necessary guidance.

12. **References**

- The Mental Capacity Act 2005 and Deprivation of Liberty Safeguards, inclusive of the respective codes of practice.
- Human Rights Act 1998
- Mental Health Act 2007
- Best Interest Assessor Capabilities, College of Social work 2012

13. **Equality and Diversity**

13.1 This document complies with the TSDFT Trust Equality and Diversity statements.

14. Document Control Information

This is a controlled document and should not be altered in any way without the express permission of the author or their representative.

Please note this document is only valid from the date approved below, and checks should be made that it is the most up to date version available.

If printed, this document is only valid for the day of printing.

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Version:	2.	Last review date:	17/12/2014
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Directorate:			
Equality Impact:	The guidance contained in this document is intended to be inclusive for all patients within the clinical group specified, regardless of age, disability, gender, gender identity, sexual orientation, race and ethnicity & religion or belief		
Committee(s) approving the document:	Care and Clinical Policy Group		
Date approved:	17/12/14		
Links or overlaps with other policies:	Mental Capacity Act 2005 Policy (0983) Deprivation of Liberty Safeguards Policy and Practice Guidance (1750) Multi Agency Mental Capacity Act Practice Guidance (1752)		

	<i>Please select</i>	
	Yes	No
Does this document have training implications? <i>If yes please state:</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Does this document have financial implications? <i>If yes please state:</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Is this document a direct replacement for another? <i>If yes please state which documents are being replaced:</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Best Interest Assessor Policy		

Document Amendment History

Date	Version no.	Amendment summary	Ratified by:
2011	1		Care and clinical policy group
11/11/2014	2	Removed the 3 yearly re approval process Replaced with supervision Supervision recording sheet inclusive of agreed learning action plan BIA Competency framework BIA Checklist	
29-01-2016	2	Adopted from ICare to ICon	

15. The Mental Capacity Act 2005 Framework

The Mental Capacity Act provides a statutory framework for people who lack capacity to make decisions for themselves, or who have capacity and want to make preparations for a time when they lack capacity in the future. It sets out who can take decisions, in which situations, and how they should go about this. It covers a wide range of decision making from health and welfare decisions to finance and property decisions

Enshrined in the Mental Capacity Act is the principle that people must be assumed to have capacity unless it is established that they do not. This is an important aspect of law that all health and social care practitioners must implement when proposing to undertake any act in connection with care and treatment that requires consent. In circumstances where there is an element of doubt about a person's ability to make a decision due to 'an impairment of or disturbance in the functioning of the mind or brain' the practitioner must implement the Mental Capacity Act.

The legal framework provided by the Mental Capacity Act 2005 is supported by a Code of Practice, which provides guidance and information about how the Act works in practice. The Code of Practice has statutory force which means that health and social care practitioners have a legal duty to have regard to it when working with or caring for adults who may lack capacity to make decisions for themselves.

“The Act is intended to assist and support people who may lack capacity and to discourage anyone who is involved in caring for someone who lacks capacity from being overly restrictive or controlling. It aims to balance an individual's right to make decisions for themselves with their right to be protected from harm if they lack the capacity to make decisions to protect themselves”. (3)

All Trust workers can access the Code of Practice, Mental Capacity Act 2005 Policy, Mental Capacity Act 2005 Practice Guidance, information booklets and all assessment, checklists and Independent Mental Capacity Advocate referral forms on iCare

http://icare/Operations/mental_capacity_act/Pages/default.aspx

16. Infection Control

All staff will have access to Infection Control Policies and comply with the standards within them in the work place. All staff will attend Infection Control Training annually as part of their mandatory training programme.

17. Quality Impact Assessment (QIA)

<i>Please select</i>			
Who may be affected by this document?	Patient / Service Users	<input checked="" type="checkbox"/>	Visitors / Relatives <input type="checkbox"/>
	General Public	<input checked="" type="checkbox"/>	Voluntary / Community Groups <input type="checkbox"/>
	Trade Unions	<input type="checkbox"/>	GPs <input type="checkbox"/>
	NHS Organisations	<input checked="" type="checkbox"/>	Police <input type="checkbox"/>
	Councils	<input checked="" type="checkbox"/>	Carers <input checked="" type="checkbox"/>
	Staff	<input checked="" type="checkbox"/>	Other Statutory Agencies <input type="checkbox"/>
	Others (<i>please state</i>):		

Does this document require a service redesign, or substantial amendments to an existing process? No	<input type="checkbox"/>
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If you answer yes to this question, please complete a full Quality Impact Assessment.

Are there concerns that the document could adversely impact on people and aspects of the Trust under one of the nine strands of diversity?	Age	<input type="checkbox"/>	Disability	<input type="checkbox"/>
	Gender re-assignment	<input type="checkbox"/>	Marriage and Civil Partnership	<input type="checkbox"/>
	Pregnancy and maternity	<input type="checkbox"/>	Race, including nationality and ethnicity	<input type="checkbox"/>
	Religion or Belief	<input type="checkbox"/>	Sex	<input type="checkbox"/>
	Sexual orientation	<input type="checkbox"/>		

If you answer yes to any of these strands, please complete a full Quality Impact Assessment.

If applicable, what action has been taken to mitigate any concerns?	
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Who have you consulted with in the creation of this document? <i>Note - It may not be sufficient to just speak to other health & social care professionals.</i>	Patients / Service Users	<input type="checkbox"/>	Visitors / Relatives	<input type="checkbox"/>
	General Public	<input type="checkbox"/>	Voluntary / Community Groups	<input type="checkbox"/>
	Trade Unions	<input type="checkbox"/>	GPs	<input type="checkbox"/>
	NHS Organisations	<input type="checkbox"/>	Police	<input type="checkbox"/>
	Councils	<input type="checkbox"/>	Carers	<input type="checkbox"/>
	Staff	<input type="checkbox"/>	Other Statutory Agencies	<input type="checkbox"/>
	Details (<i>please state</i>):			

18. Appendices

1. Best Interest Assessor Capabilities
2. Best Interest Assessor Supervision Recording sheet
3. Best Interest Assessor Checklist

Appendix 1: Best Interest Assessor Capabilities

Best Interest Assessor Capabilities

This document describes the six areas of capability Best Interest Assessors (working within the Deprivation of Liberty Process) need to practise effectively within the role. They reflect and build on the requirements of the regulations in relation to the capabilities needed.

The six areas are:

- **Key Capability 1: The ability to apply in practice, and maintain knowledge of, relevant legal and policy frameworks**
- **Key Capability 2: The ability to work in a manner congruent with the presumption of capacity**
- **Key Capability 3: The ability to take all practical steps to help someone to make a decision**
- **Key Capability 4: The ability to balance a person's right to autonomy and self-determination with their right to safety, and respond proportionately**
- **Key Capability 5: The ability to make informed, independent best interest decisions within the context of a Deprivation of Liberty Safeguards (DoLS) assessment**
- **Key Capability 6: The ability to effectively assess risk in complex situations, and use analysis to make proportionate decisions**

There is a presumption that prior to training for the role, professionals will already be able to demonstrate a high level of professional practice in their area of specialism, and be able to evidence the following:

- A minimum of two years' post qualifying experience¹
- A working knowledge of the Mental Capacity Act 2005 (MCA) and human rights legislation, for example assessing capacity and making best interest decisions
- The capability to work independently and autonomously.

¹ As defined by the regulations.

	Key Capability 1: The ability to apply in practice, and maintain knowledge of, relevant legal and policy frameworks	
Underlying expectations	<p>The Best Interest Assessor (BIA) has:</p> <p>1.1 A working knowledge of:</p> <ul style="list-style-type: none"> (i) Mental capacity legislation and the Deprivation of Liberty Safeguards (DoLS), their related codes of practice, national and local policy guidance (ii) Relevant parts of other legislation, codes of practice, national and local policy guidance, in particular the Human Rights Act 1998, the Mental Health Acts (MHA) 1983 and 2007, and law/policy related to Adult Safeguarding (iii) Relevant case law and its application in practice (iv) The developing concept of deprivation of liberty (vi) The legal position and accountability of DoLS/BIA's in relation to the MCA, any employing organisation and the authority on whose behalf they are acting. 	<p>1.2 The ability to:</p> <ul style="list-style-type: none"> (i) Base DoLS/BIA practice on a critical evaluation of a range of case law and research relevant to evidence-based practice (ii) Provide a clearly evidenced, written rationale of the process including where relevant information on differences of opinion, and how information has been analysed and used to reach an evidence-informed professional opinion (iii) Analyse and critically reflect on personal practice in order to identify achievements and opportunities for further development (iv) Exercise the appropriate use of independence, authority and autonomy and use it to inform their future practice as a BIA (v) Work within their area of competence, seeking further advice as appropriate

		(vi) Assert a social perspective and make properly informed independent decisions in tight timescales.
	Key Capability 2: The ability to work in a manner congruent with the presumption of capacity	
Presumption of capacity	<p>The BIA is able to demonstrate:</p> <p>2.1 An understanding of:</p> <ul style="list-style-type: none"> (i) The Human Rights Act in particular the basic rights to personal autonomy, choice, privacy, liberty and self-determination, providing challenge to others where needed (ii) The formal two-stage assessment of capacity (iii) Advance decisions and lasting powers of attorney including in relation to refusing life sustaining treatment (iv) The role of the relevant person's representative, and the role of the relevant person in choosing their representative. 	<p>2.2 The ability to:</p> <ul style="list-style-type: none"> (i) Competently assess capacity in complex cases, seeking other evidence as appropriate (ii) Understand and respond sensitively to, issues of race, faith, belief, disability, age, sexuality and culture in carrying out DoLS assessments (iii) Consult sensitively all those with an interest in the person's welfare, and sustain engagement in circumstances where there is hostility or risk (iv) Reflect on the influence and impact of their own values on professional practice (v) Appropriately identify legally appointed decision makers such as attorneys and court appointed deputies, and assess whether advance decisions are valid and applicable

		(vi) The ability to promote the rights, dignity and self-determination of the relevant person consistent with their own needs and wishes, to enable them to contribute to the decisions made affecting their quality of life and liberty.
	Key Capability 3: The ability to take all practical steps to help someone to make a decision	
Taking all practical steps to help someone make a decision	<p>The BIA is able to demonstrate:</p> <p>3.1 An understanding of:</p> <ul style="list-style-type: none"> (i) The impact of mental disorder on mental capacity, including the effect of social, physical and developmental factors on a person's ability to make decisions (ii) The social impact of the disability or condition, how this impacts on the relevant person, the family, carers, and the decision making process (iii) The role of the Independent Mental Capacity Advocate (IMCA) within the DoLS process, and the circumstances in which an IMCA should be appointed 	<p>3.2 The ability to:</p> <ul style="list-style-type: none"> (i) Communicate skilfully and confidently in the context of a DoLS assessment (ii) Utilise a range of approaches to sustain engagement with people whose capacity and ability to communicate may fluctuate, or be very limited (iii) Enable the person to contribute to the decision making process as far as is possible given the circumstances of the case

	(iv) A variety of forms of communication, including communication aids and tools and the impact on the relevant person of communicating at different times of the day and in different locations.	(iv) Support people through a complex assessment process within the framework of the MCA including interviewing the person, their relatives and staff and identifying and appointing the relevant person's representative.
	Key Capability 4: The ability to balance a person's right to autonomy and self-determination with their right to safety, and respond proportionately	
Unwise decisions	<p>The BIA is able to demonstrate:</p> <p>4.1 An understanding of:</p> <ul style="list-style-type: none"> (i) The MCA in relation to the impact of unwise decisions (ii) The links between the MCA/DoLS, the MHA and the protection of adults at risk of abuse within the wider need to recognise people's right to autonomy (iii) The impact of coercion and power imbalances on people's abilities to make informed decisions. 	<p>4.2 The ability to:</p> <ul style="list-style-type: none"> (i) Carry out work with individuals that is person centred and promotes choice and autonomy, while considering issues of risks and proportionality (ii) Be alert for the need for assessment under the MHA where relevant persons are ineligible for DoLS (iii) Make appropriate safeguarding referrals.

Key Capability 5: The ability to make informed, independent best interest decisions within the context of a Deprivation of Liberty Safeguards (DoLS) assessment	
<p>Actions/decisions should be in the person's best interests</p>	<p>The BIA is able to demonstrate:</p> <p>5.1 An understanding of:</p> <ul style="list-style-type: none"> (i) What constitutes 'best interests', as set out within the MCA, codes of practice and case law (ii) The DoLS assessment process including the role of the Mental Health Assessor and IMCA (iii) The implications of a range of treatments and interventions applicable to the relevant person's situation (iv) The recommendations a BIA can make in relation to deprivation of liberty. <p>5.2 The ability to:</p> <ul style="list-style-type: none"> (i) Articulate the DoLS process and the BIA's role within the assessment process (ii) Determine whether: <ul style="list-style-type: none"> (a) a deprivation of liberty is occurring (b) the deprivation is in the person's best interests using the section 4 checklist (c) the person meets the requirements for age, no refusals, mental capacity and eligibility if appropriate (iii) Make appropriate recommendations on: <ul style="list-style-type: none"> (a) conditions attached to the authorisation, and (b) duration of the authorisation

		<p>(iv) Formally record assessments to a high professional standard likely to withstand legal scrutiny, demonstrating the ability to analyse and evaluate complex information; to provide evidence for decision making including the rationale for the timescale recommended for any deprivation of liberty</p> <p>(v) Consult the Mental Health Assessor, and IMCA if appointed, and document and examine their views in the written decision making process.</p>
	<p>Key Capability 6: The ability to effectively assess risk, in complex situations, and use analysis to make proportionate decisions</p>	
Least restrictive options	<p>The BIA can demonstrate:</p> <p>6.1 An understanding of:</p> <ul style="list-style-type: none"> (i) Risk, how to assess risk, likelihood and seriousness of risk, proportionate responses to managing risk (ii) The benefits of positive risk taking. 	<p>6.2 An ability to:</p> <ul style="list-style-type: none"> (i) Weigh up the pros and cons of the different options in the light of best interests and risk assessment (ii) Identify risk, and consider its management in a less restrictive manner (if possible) to arrive at a proportionate outcome (iii) Evidence in their report an analysis of risk
		<p>including proportionality and the actual likelihood of harm</p> <p>(iv) Take action when an application to the Court of Protection is needed</p> <p>(v) Challenge risk averse practice.</p>

Appendix 2: Best Interest Assessor Supervision Recording sheet

Best Interest Assessor Supervision Record

Name of Best Interest Assessor.....

Name of Supervisor.....

Date:

Forthcoming BIA Calendar dates:

1.....

2.....

3.....

4.....

Date legal status expires.....

<p>- Evidence provided to support BIA Capabilities Framework</p>	
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-		
- Areas of identified Strengths		
- Areas of identified weaknesses requiring improvement		

<p>- Area of concern identified by the BIA</p>	
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Identified areas for improvement	Agreed Action	
<p>Area 1</p>		<p>signature</p>

Area 2			
Area 3			

Area 4			
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Appendix 3: Best Interest Assessor checklist to support assessment and report writing

Please ensure you pay regard to this checklist during your assessments and when completing your form 10. It forms part of a quality assurance process.

Tick each box on completion

- Have you identified restrictive measures by looking through all care plans? Consider Type/intensity/duration/effect?
- Have you identified the views of the client? **This is really important**
- Have you spoken to family members, Carers, health and social care staff and any other significant person such as an IMCA?

Within your Form 10

- Have you provided a list to identify from where you accessed information?

Within Box D5

***You must clearly set out each reason why you feel the person is deprived of their liberty**

- Have you clearly bullet pointed in the following:
 - What evidence you have identified for continuous supervision (**essential**)
 - What evidence you have identified regarding any control measures (**essential**)
 - What evidence you have that the person is not free to leave (**essential**)
- The views expressed by the client, past or present (**you must demonstrate this**)
- Have you made reference to the Supreme Court Ruling of “P v Cheshire West and Chester Council and another” and “P and Q v Surrey County Council” Acid Test

Have you made reference to the DoLS Code of practice section 2.5 which include such aspects as:

- The staff exercises complete and effective control over the care and movement of a person for a significant period
- The staff exercise control over assessments, treatment, contacts and residence
- The person loses autonomy because they are under continuous supervision and control

Within Box D6

Have you made reference to the Mental Capacity Act 2005 Section 5 (**Statutory Best Interest checklist essential**)

Have you clearly bullet pointed **each individual point** to evidence why it is the person's best interest to be in the hospital or care home?

This is really important and must be clearly set out

Within Box D7

Have you clearly bullet pointed **each individual aspect** of the harm/risk that you will be avoiding or minimising by depriving the person of their liberty in the care home or hospital?

This is really important and must be clearly set out

Within Box D8

Have you explained what other **less restrictive options** have been explored by the Managing Authority?

Have you described why these options have failed?

Have you linked the information provided within this section to the risks identified in box D7 to ensure you can evidence why the deprivation of liberty is proportionate?

Have you set out what you hope to be achieved within the timescale you have recommended to the Supervisory Body, again as evidence to the proportionality of that time?

This is really important and must be clearly set out

Conditions

- Have you made sure that you have identified Conditions if you are recommending a deprivation?
- Are they set specifically to reduce restrictive measures?
- Have you ensured that they are realistic and written for the Managing Authority?

Section G

Do you have any other comments to make in this section that will be useful to the Managing Authority, Commissioners of care or Supervisory Body?

Representative

- Have you identified a Representative (or not) and completed form 24 to let the Supervisory Body know?
- Have you signed and dated your completed assessments?