



**SOCIAL CARE PROVIDER SERVICES MCA, DOLS
AND COP GUIDANCE DURING COVID-19 CRISIS
Version 5**

17 April 2020 – Updated 17th & 24th July 2020

Version Control

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16.04.2020	Government guidance on MCA, DOLS & COP	Page 1	Cate Short/ Wendy Carr
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05.06.2020	Updated Government Guidance MCA, DOLS & COP – links added	Page 7	Cate Short / Wendy Carr
05.06.2020	Government Guidance Easy Read – links added	Page 8	Cate Short / Wendy Carr
17.07.2020	June 15 th Updated Government Guidance MCA, DOLS & COP and new additional guidance	Page 2	Cate Short
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COVID-19 GUIDANCE DOCUMENT FOR CARE PROVIDERS ANY SETTING 30.03.20

General:

This does not constitute legal advice but is general guidance on best practice. Providers / registered managers should seek their own legal advice where necessary. Providers need to be familiar with national frameworks and guidance for the management of the COVID-19 Pandemic. This general guidance has attempted to make easily available the relevant links to specific national guidance documents and additional information available at the time of writing.

In this unprecedented situation, information and direction is rapidly evolving and may change frequently. Providers need to keep abreast of developing national guidance.

Coronavirus Act:

[The Coronavirus Act 2020](#) is now in force. Neither the MCA 2005 nor the DoLS process is mentioned in the Act. They will continue to apply.

*"What we know so far clearly indicates that **the MCA 2005 and the current DoLS structures remain in place during the pandemic**. Plainly, however, there are going to be challenges for local authorities, social workers and carers to ensure compliance with the DoLS system in the light of Government guidance to work from home, maintain social distancing and the strong imperatives not to visit residential care and nursing homes."* <https://www.39essex.com/the-covid-19-pandemic-the-coronavirus-bill-and-the-mental-capacity-act-2005/>

DHSC Guidance: The Mental Capacity Act (2005) (MCA) and Deprivation of Liberty Safeguards (DoLS) During the Coronavirus (COVID-19) Pandemic

The government has updated [guidance in relation to MCA, DOLS & Court of Protection \(COP\)](#) and has published [additional guidance](#). This guidance is only valid during the COVID-19 pandemic and applies to those caring for adults who lack the relevant mental capacity to consent to their care and treatment. The guidance applies until withdrawn by the Department. During the pandemic, the principles of the MCA and the safeguards provided by DoLS still apply.

Decision makers in hospitals and care homes, and those acting for supervisory bodies Care Providers should refer to this document when considering deprivation of liberty arrangements, and whether an authorisation should be sought in whatever setting.

The Mental Capacity Act:

As detailed above, the MCA continues to apply during the pandemic. Resource implications and competing priorities across all social care and health settings are highly likely to be challenging which is recognised within national guidance and the Coronavirus Act 2020

Any decision made for or on behalf of an individual where it is reasonably believed they lack capacity, still needs to uphold the MCA 2005 principles and to be defensible. Thought as to how this is recorded, captured succinctly and as practicably as possible is required. Reasonable and practicable steps need to be taken to demonstrate application of the MCA. It is necessary to be able to justify what has been put in place and why it was felt necessary.

39 Essex Chambers update suggests the following for completion of DoLS assessments, however a similar language could be adopted / adapted for other capacity assessments:

"This assessment occurred at a time when public health measures had been put in place by HM Government to contain the spread of the COVID-19 virus. Professionals were being advised only to carry out essential visits to care homes.

When completing this assessment, I had to balance the need to protect X's Article 5 rights against the need to protect him/her from transmission of the virus. COVID-19 infection would have posed a grave risk to X in view of his/her underlying health conditions.

In view of these concerns, I therefore decided to base my assessment on existing documents and on the views of X's carers and family/friends rather than visiting him/her in person."

If a provider needs to take measures to isolate a person, the action needs to be necessary to protect the individual from harm and proportionate to the risk and severity of that harm. Blanket guidance cannot be provided and each case will be reflective of the individual concerned, demonstrative of the least restrictive option available and for the least possible amount of time. Providers would still need to be able to justify any interventions.

The [MCA Code of Practice](#) uses 'practicable' throughout. What was practicable up until recently is no longer practicable during the COVID-19 crisis. Examples of how urgent situations are reflected in the MCA Code of Practice are below. Please refer to the Code for additional guidance as required.

2.9 'In some situations treatment cannot be delayed while a person gets support to make a decision. This can happen in emergency situations or when an urgent decision is required (for example, immediate medical treatment). In these situations, the only practical and appropriate steps might be to keep a person informed of what is happening and why.'

3.6 '...However, even in emergency situations, healthcare staff should try to communicate with the person and keep them informed of what is happening.'

5.13 '... If the decision is urgent, there may not be time to examine all possible factors, but the decision must still be made in the best interests of the person who lacks capacity.....'

Chapter 6 pg 93 '... If restraint is being considered, is it necessary to prevent harm to the person who lacks capacity, and is it a proportionate response to the likelihood of the person suffering harm – and to the seriousness of that harm?' (Please also see 6.40-6.48 regarding restraint.)

(MCA 2005 Code of Practice)

What Would Good Care Look Like during the Coronavirus crisis:

If a resident lives in a care home or supported living environment, it should be respected that this is that person's home and to the best ability should be treated as a household. Therefore the provider should follow the same national guidelines in terms of managing COVID-19. See [Government Guidance on Meeting People from outside your household](#). It is anticipated that the Government will issue new guidance in relation to supported living and people who may lack capacity to follow national guidelines.

During this pandemic, care settings continue to consider the most effective ways to limit the spread of this virus to its residents / tenants and staff and are continuing to minimise visitors to the home as much as possible with many relatives only having limited and carefully planned face to face contact with their family and friends. For the avoidance of doubt, restrictions on contact need to be MCA compliant ie. If the person lacks capacity, decisions must be made in their best interests. In addition, if the person is deprived of liberty, or there is disagreement about contact then DOLS or a Court of Protection application will be required. Providers need to be mindful as Government Restrictions for the general population continue to ease, how this may apply in their setting.

When individual residents or tenants display any of the symptoms for COVID -19 care homes may consider the option of restricting residents to their bedroom in an attempt to prevent the spread of

the virus. The pandemic should not be used as a reason to defer from a best interests decisions. Please refer to the specific government guidance on extremely vulnerable people. (Link on p8)

39 Essex Street guide re DOLS and Care Act: <https://www.39essex.com/the-coronavirus-bill-2020-and-its-effect-on-the-care-act-2014/>

'It is essential not to “dress-up” resource-based decisions in relation to deprivation of liberty – even in a time when resources may be stretched to the limit – as best interests decisions. This is only likely to generate s.21A challenges, which will be a further pressure on resources.

It is essential (if deviating from normal practice) that you have clear systems in place for explaining why those deviations took place.'

Application of Good Practice:

- Service users are supported to maintain contact with family & friends accessing technology or other platforms appropriate for the person receiving care. See below for information on use of available platforms
- Service users deprived of their liberty are provided with information, in a format they understand, about any such measures.
- Service users are provided with accessible information about keeping safe. See below for sources of accessible information
- Service users deprived of liberty are supported to access at least 1 hour's fresh air daily and regular exercise where this appropriate - there are many online videos that can be used for indoor exercise sessions.
- Service users who are socially distancing are supported to follow current Government COVID-19 guidance
- Where practicable, care home residents should be enabled to return to own/ family home during the pandemic
- Respect and dignity remain fundamental to support received. Human Rights remain pivotal. Please read the [Council of Europe's Statement of principles](#).
- [Ethical Consideration guidance](#) sets out 8 key ethical considerations.
- [Hospital Discharge & Covid -19](#) provides considerations for discharge processes.
- Mental Capacity to make decisions should still be considered as detailed above. A necessary & proportionate response to interventions needs to be demonstrated in terms of managing this crisis effectively. This situation is not an opportunity to introduce restrictions which are not relevant to the management of the crisis.
- Proposed interventions should be defensible and accurately recorded.
- DOLS applications and COPDOL referrals should still be made, and LCC alerted to high priority cases.

Procedures for the Management of care provisions which amount to a Deprivation of the Persons' Liberty in all settings:

The Challenges:

Undertaking face to face capacity and DoLS related assessments during the current period of directed social distancing should not take place in situations unless it is the only option, in an emergency situation and consideration has been given to the risks.

Providers may need to take steps to isolate people within their care which may represent additional restrictions and / or amount to a deprivation of the persons' liberty.

The clear directed guidance around social distancing and non-emergency visits reduces the scope to undertake the DOL processes – both DoLS & COPDOL. These limitations will drastically reduce the ability to maintain the formalised processes.

There needs to be a proportionate response to this taking account of the least restrictive options available for the least amount of time possible. This approach needs to be adopted in any situation where restrictions are placed on an individual who lacks capacity to make decisions in question and in the current situation – relating to how to manage the Coronavirus crisis.

Understandably, those providing care and support for vulnerable people who fall into this category, are concerned at how to uphold their responsibilities at this difficult time. A blanket approach cannot be given as all circumstances will vary dependent on the individual situation. As stated above, organisations may need to seek their own legal advice

Care Providers Considerations during the COVID-19 Pandemic:

Simple solutions seen as less restrictive options:

1. Segregation / Isolation / Physical Restraints:

Record what less restrictive measures you have considered and why these are not appropriate before making a decision to segregate or isolate a person to a room or area.

- Safety gates (similar to child safety gate) for those who are nursed in bed, who enjoy their own company or are happy to stay in their own room.
- A safety gate could be considered to deter people from wandering from rooms. If residents are likely to attempt to climb gate, this should not be used.
- Where residents are difficult to isolate, try as much as possible to cohort the residents that are symptomatic into one area i.e. keep symptomatic residents together. Identify key rooms, or lounges for those with symptoms of COVID -19.
- Organise staff, work the rota to minimise moving staff between homes and floors.
- If possible, staff should work either with symptomatic or asymptomatic residents (but not both) for the duration of the outbreak.
- Movement of symptomatic residents should be minimised.
- Where possible, use of en-suite facilities.

2. Chemical Restraints

Record what less restrictive measures you have considered to try to manage agitation, wandering, anxiety, distress, being unable to go out etc, which stop short of chemical restraint. Record why these are not appropriate before considering use of medication.

Be creative in thinking about solutions, for example free access to the garden; being able to walk freely around the living room or corridors whilst other residents are not there; lots of reassurance and telephone calls/skype or WhatsApp calls from family or familiar people, possibly more frequently or for more extended periods; group activities within the house (including increased involvement in domestic activities); can P be supported to go on a walk, indoor group exercises. Obviously these depend on the client group, individual circumstances and responses, and is not an exhaustive list.

If no alternatives are currently practical or possible and you are considering medication solutions then:

- Decisions regarding new or increased medications must only be taken by the relevant GP/CMHT/medical practitioner.
- Consider and record what harm P would come to if medication was not prescribed and how likely is it they would come to that harm.
- Consider unwanted side effects such as increased risk of falling; more staff time is needed to support activities of daily living such as washing, dressing, eating/drinking; some medications can induce the same symptoms which you are aiming to manage such as anxiety; episodes of incontinence; reduced verbal communication.
- When speaking to the GP/CMHT/medical practitioner you should advise them of the reasons for the request, what alternatives you have considered and the harm you consider would come to P without it.
- As a care home, you should review the new or increased medication every week, and the prescriber should be asked to give regard to either ending or reducing the medication if the burdens of administering it outweigh the benefits.
- As soon as a less restrictive alternative becomes practical and possible the prescriber must be asked to reduce/cease the medication.
- If covert medication is being used or proposed, care providers must follow NHS Covert Medication Guidance <http://www.lsab.org.uk/wp-content/uploads/Covert-Medication-Guidance-FINAL-Feb-18.pdf>

3. Compliance with self-isolation and social distancing

Government rules on social distancing have eased so people can now home more frequently, may be able to have visitors (see Govt guidance: [Meeting people from outside your household](#)), and can access more facilities in the community. In light of changes in government guidance care plans need to be kept under continual review, and flexed accordingly. The challenge for providers is supporting people who struggle to understand the rules to apply them in practice.

If the need to apply a local lock down occurs, then the guidance will revert to supporting people to remain at home. Under these conditions, people will be able to leave their home for medical need. If a person in your care has a specific health condition that requires them to leave the home to maintain their health - including if that involves travel beyond their local area - then they can do so. This could, for example, include where individuals with learning disabilities or autism require specific exercise in an open space two or three times each day or where individuals need support from more than one carer - ideally in line with a care plan agreed with a medical professional.

Even in such cases, in order to reduce the spread of infection and protect those exercising, travel outside of the home should be limited, as close to their local area as possible, and they should remain at least 2 metres apart from anyone who is not a member of their household or a carer at all times.

Where some people refuse to comply with the self-isolation and social distancing guidelines please refer to Lancashire County Council's guidance 'How do we support people who refuse to comply with the self-isolation and social distancing guidelines?'

4. Testing for COVID-19

All practicable steps should be taken to support the person to make the decision to be tested for themselves. If a person lacks capacity to consent, then a best interests decision should be made taking into account all relevant circumstances, and where necessary consulting with a medical practitioner. It should not be assumed that testing for COVID is always in a person's best interests.

Where it is deemed not to be in the person's best interests, it may be necessary to seek advice from Infection Prevention and Control (IPC). Please refer to local testing and MCA guidance

How the DoLS Team will be operating during the COVID-19 Pandemic:

The DOLS team are continuing to undertake their assessments remotely if the required outcomes can be achieved in this way.

Assessors will continue trying to involve the relevant person in the assessment process **as much as is possible and practical**, for example via video link, telephone or by asking a 3rd party to consult on their behalf. Where appropriate previous doctors' assessments will be used instead of gaining fresh assessments.

If a face to face visit is required the assessor will agree this in advance with the provider and ensure that it is undertaken in line with LCC guidance.

LCC recognises that the DOLS process is a burden on the already stretched resources of managing authorities. As such we will try and minimise the calls we make when screening new applications. It is important therefore that if the managing authority believes that a particular case is high priority that they make this very clear in the DOLS referral or by contacting the DOLS team directly.

DOLS Team: 01772 535444 or dols.bia@lancashire.gov.uk

How COPDOL Processes will be managed:

Court of Protection (COPDOL) applications for [Judicial Authorisation of the deprivation of a person's liberty](#) in a setting other than a hospital or care home, are usually but not exclusively needed for people in supported living. These types of application are led by the service user's allocated social worker, and case managed by LCC's legal team, not by the central DOLS BIA Team.

Locality social work teams will continue to apply LCC's COP Prioritisation Tool to decide whether a particular COPDOL or Welfare application needs to be made at this time, or whether it can be held in abeyance. High priority cases will be progressed as soon as practicable, and social workers will apply the same principles as already outlined in this document in order to attempt to keep people safe from the spread of COVID-19.

Care Providers should continue to notify LCC of people in their care who they consider to be deprived of liberty. Care providers should alert the allocated social worker or duty social worker to those cases that they consider most urgent by referring through Customer Services. The COP prioritisation tool is available on request from Cate Short LCC Court of Protection Coordinator. cate.short@lancashire.gov.uk

EXTREME CAUTIONARY NOTES – REFER TO ABOVE CARE HOME CONSIDERATIONS:

- Do not increase medication without prior consultation with appropriate medical practitioner.
- Do not impose restrictions under this guidance which are not related to the COVID-19 pandemic
- Do not impose restrictions which exceed what is reasonable and proportionate for the person involved. Be satisfied that the intervention is justifiable and defensible.
- Do not disregard guidance set out nationally.
- Do not disregard importance of consultation with others interested in the persons' welfare. Take reasonable steps to consult and keep people of what is happening and why this is necessary.

RELEVANT INFORMATION:

GOV.UK CORONAVIRUS ACT 2020:

http://www.legislation.gov.uk/ukpga/2020/7/pdfs/ukpga_20200007_en.pdf

DHSC GUIDANCE: THE MENTAL CAPACITY ACT (2005) (MCA) AND DEPRIVATION OF LIBERTY SAFEGUARDS (DOLS) DURING THE CORONAVIRUS (COVID-19) PANDEMIC –updated 15.06.20

<https://www.gov.uk/government/publications/coronavirus-covid-19-looking-after-people-who-lack-mental-capacity/the-mental-capacity-act-2005-mca-and-deprivation-of-liberty-safeguards-dols-during-the-coronavirus-covid-19-pandemic>

DHSC GUIDANCE: THE MENTAL CAPACITY ACT (2005) (MCA) AND DEPRIVATION OF LIBERTY SAFEGUARDS (DOLS) DURING THE CORONAVIRUS (COVID-19) PANDEMIC – ADDITIONAL GUIDANCE –updated 15.06.20

<https://www.gov.uk/government/publications/coronavirus-covid-19-looking-after-people-who-lack-mental-capacity/the-mental-capacity-act-2005-mca-and-deprivation-of-liberty-safeguards-dols-during-the-coronavirus-covid-19-pandemic-additional-guidance>

CQC COVID-19

<https://www.cqc.org.uk/news/stories/impact-covid-19-restraint-segregation-seclusion-review-right-support-right-care-right>

COVID-19 ETHICAL CARE FRAMEWORK ADULT SOCIAL CARE:

<https://www.gov.uk/government/publications/covid-19-ethical-framework-for-adult-social-care/responding-to-covid-19-the-ethical-framework-for-adult-social-care>

COURT OF EUROPE GUIDANCE:

<https://rm.coe.int/16809cfa4b>

COVID-19 RESIDENTIAL, SUPPORTED LIVING AND CARE HOME GUIDANCE:

This publication was withdrawn on 13 May 2020. An independent legal challenge has been launched requesting the Government to publish new guidance

COVID-19 EXTREMELY VULNERABLE PEOPLE

<https://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19>

COVID-19 & HOSPITAL DISCHARGE:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874213/COVID-19_hospital_discharge_service_requirements.pdf

TECHNOLOGY – A SELECTION OF PLATFORMS FOR VIRTUAL CONTACT (other platforms are available)

Skype <https://products.office.com/en-gb/skype-for-business/download-app>

FaceTime <https://support.apple.com/en-gb/HT204380>

Zoom.us <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>

WhatsApp <https://web.whatsapp.com/>

Facebook <https://en-gb.facebook.com/>

GENERAL & ACCESSIBLE INFORMATION

Gov.uk Update 29.05.2020: Easy Read Format

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/888422/emergency-mca-guidance-covid-19-easy-read.pdf

Coronavirus (COVID-19): what you need to do <https://www.gov.uk/coronavirus>

Advice for Everyone <https://www.nhs.uk/conditions/coronavirus-covid-19/>

Hand washing video <https://youtu.be/bQCP7waTRWU>

Books Beyond Words <https://booksbeyondwords.co.uk/>

MENCAP <https://www.mencap.org.uk/advice-and-support/health/coronavirus-covid-19>

The Deaf Health Charity Sign Health <https://www.signhealth.org.uk/coronavirus/>

Sight Advice FAQ <https://www.sightadvicefaq.org.uk/independent-living/Covid-19-Qs>

SCOPE <https://www.scope.org.uk/coronavirus-information/>

How to stay safe poster

<https://www.salfordcvs.co.uk/system/files/How%20to%20stay%20safe.pdf>

EASY READ GUIDE COVID-19

<https://www.easy-read-online.co.uk/media/53192/advice-on-the-coronavirus-v1.pdf>

NWTDT / Pathways Coronavirus daily update

<https://www.youtube.com/watch?v=2cfadhEUkFA&feature=youtu.be>

CS / NC / WC 16.04.20 - UPDATED 24.07.2020

