Together we CAN protect

**EoE MCA RIN Guidance on**

**Appointment and Allocation of BIA’s and S12 Dr’s by Supervisory Bodies.**

In the context of this guidance, appointment refers to the eligibility of an individual to be an assessor (which professions, what skills and experience are required, etc). Selection is concerned with the individual selection of an assessor in relation to a request for standard authorisation for a particular relevant person. Instruction is the process by which an assessor is asked by the supervisory body to undertake an assessment.

Paragraph 4.16 of the Code of Practice states: “Assessors act as individual professionals and are personally responsible for their decisions. Managing authorities and supervisory bodies must not dictate or seek to influence their decisions.”

Regulation 3 of the Assessment Regulations sets out that a supervisory body may only appoint an assessor (other than a person undertaking an age assessment) where they are satisfied that the person:

- a) is insured in respect of any liabilities that might arise in connection with carrying out the assessment;
- and
- b) has the skills and experience appropriate to the assessment he or she is to carry out.

In terms of skills this must include:

- a) the ability to communicate effectively with a view to identifying characteristics and attributes of a person that are relevant to that person’s needs,
- and
- b) the ability to act independently of any person who appoints them to carry out an assessment and independently of any person who is providing care or treatment to the person he or she is to assess.
In determining whether a person has suitable skills the supervisory body must be satisfied that the person has the necessary interpersonal skills that will enable him or her to gather all of the relevant information needed to carry out the assessment and is likely to make an objective assessment based on that information. The supervisory body must be satisfied that whilst the person is capable of taking account of the views of persons who have an interest in the relevant person he or she is not likely to be unduly influenced in carrying out his or her assessment.

The supervisory body must also be satisfied than an assessor has an enhanced criminal record certificate issued under section 113B of the Police Act 1975, or where relevant a criminal record certificate issued pursuant to section 113A of that Act.

Nobody can or should carry out an assessment unless they are protected against any liabilities that might arise in connection with carrying out the assessment. Individual assessors will need to satisfy themselves, and any supervisory body that selects them as an assessor, that they are appropriately covered by either employers’ or personal insurance. (CoP 4.18)

In respect of best interests assessors only, the supervisory body must be additionally satisfied that the person has the ability to take account of the views of any person to be assessed and the ability to assess the relevance and importance of those views in making an assessment.

It is recommended that supervisory bodies maintain a register of suitable assessors within their area. There is nothing to prevent an assessor from also being an employee of the supervisory body but particular care should be taken to ensure that they meet the relevant requirements particularly in relation to the requirement of independence. An assessor may undertake assessments for more than one supervisory body.

**Mental health assessor**

The Regulations 22 set out that only a doctor may be appointed to be a mental health assessor but only if that doctor is either:

a) approved under section 12 of the Mental Health Act 1983, or

b) has, to the satisfaction of the supervisory body, relevant experience in the diagnosis or treatment or mental disorder.

Please note that the Code of Practice (second bullet of paragraph 4.35) states a that a doctor must have three years post-registration experience in the diagnosis or treatment of mental disorder and (Code of Practice (paragraph 4.36) ) will have to have completed appropriate training (Royal College of Psychiatry DoLS Training).
**Best interest assessor**

Regulation 23 sets out that only the following are eligible to undertake a best interests assessment:

a) an approved mental health professional (this is a person approved under section 114(1) of the Mental Health Act 1983);

b) a social worker registered with the General Social Care Council;

c) a first level nurse (this is a nurse who is registered in Sub-Part 1 of the register maintained by the Nursing and Midwifery Council, and is not limited to a nurse who is trained in mental health or learning disabilities);

d) an occupational therapist registered in Part 6 of the register maintained under article 5 of the Health Professions Order 2001;

e) a chartered psychologist listed in the British Psychological Society’s Registered of Chartered Psychologists and who holds a practising certificate issued by that Society.

They are only eligible to undertake a Best Interests Assessment if they have completed a Best interests Assessor Training which has been approved by the Secretary of State.

This means that the following, amongst others may not undertake a best interests assessment are:

a) a doctor;

b) a second-level nurse, even if that nurse is trained in mental health or learning disabilities

**Professionals who are ineligible to conduct assessments include:**

**a) Professional relationships**

The Regulations state:

A supervisory body must not select a person to carry out a best interests assessment if that person is involved in the care, or making decisions about the care, of the relevant person.

Where the managing authority and supervisory body are both the same body, the supervisory body must not select a person to carry out a best interests assessment who is employed by it or who is providing services to it.
b) Personal relationships

A supervisory body must not select a person to carry out an assessment if the person is either:

- a relative of the relevant person (the relevant person is the person who is now deprived of their liberty) or
- a relative of a person who is financially interested in the care of the relevant person.

The regulations also state:

Supervisory bodies may require an assessor to have skills or experience not listed in the regulations to satisfy themselves that a best interests assessor meets their additional requirements. The supervisory body may set local standards, for example, the minimum length of a training course that is acceptable to them or individual universities may set different academic requirements. The regulations have set the minimum national standards that must be met.

The regulations clearly stipulate there must be no conflict of interest and that the person carrying out the best interests assessment must not be involved in the individual's care. It is probable that the Court would take a similar view of using a DoLS approved s12 Dr who was involved in the individual's care as the assessing Mental Health Professional as there may have a conflict of interest.

Where a service user is under the care of a DoLS approved s12 Dr, that professional must be consulted with by the s12 Dr appointed by the Supervisory Body, but should not be used as the assessing Dr.

The supervisory body should seek to avoid appointing assessors in any other possible conflict of interests situations that might bring into question the objectivity of an assessment. (CoP 4.13)

Selection of assessors (general)

As set out above the selection of the assessor differs from general eligibility and appointment of assessors; in respect of an individual assessment a supervisory body can only select an assessor where that person is:

a) not financially interested in the care and treatment of the relevant person;

b) not a relative of the relevant person;

c) not a relative of a person who is financially interested in the care of the relevant person.

The Regulations set out the nature of the personal relationships. A relative is:
a) the father, mother, stepfather, stepmother, son, daughter, grandmother, grandfather, grandson or granddaughter of that person or of that person’s spouse, former spouse, civil partner or former civil partner

b) the brother, sister, uncle, aunt, niece, nephew or first cousin (whether of the full blood or of the half blood or by marriage or civil partnership) of that person or of that person’s spouse, former spouse, civil partner or former civil partner.

A spouse or civil partner includes a person who is not married to or in a civil partnership with a person but is living with that person as if they were.

The Regulations also set out what is meant by financial interest: “where that person is a partner, director, other office-holder or major shareholder of the care home or independent hospitals that has made the application for a standard authorisation”.

The DoLS Code of Practice (4.14) notes other relevant factors for supervisory bodies to consider when appointing assessors include:

- the reason for the proposed deprivation of liberty
- whether the potential assessor has experience of working with the service user group from which the person being assessed comes (for example, older people, people with learning disabilities, people with autism, or people with brain injury)
- whether the potential assessor has experience of working with people from the cultural background of the person being assessed, and
- any other specific needs of the person being assessed, for example, communication needs.

**Selection of best interests assessor**

A supervisory body may only select a best interests assessor where that person is not involved in the care or treatment, or making decisions about the care or treatment, of the relevant person.

The best interests assessor may be employed by or contracted to work in the managing authority or the supervisory body (including where the managing authority and supervisory body are the same organisation), but must be outside the decision making or care or treatment delivery of the relevant person.

The Supervisory Body must be satisfied that a person has the necessary skills to enable him or her to gather all of the relevant information needed to carry out the assessment and is likely to make an objective assessment based on that information.

Where a service user is placed in a mental health hospital bed, the Supervisory Body should ensure that the appointed BIA has comprehensive knowledge of both MCA and MHA or is dually qualified as both a BIA and an AMHP.
**Instruction of assessors**

As noted in the Code of Practice (see paragraph 4.13) the six assessments do not have to be completed by six different assessors and it is desirable to minimise the burden on the individual being assessed. The Act sets out that the mental health and the best interests assessments must not be completed by the same person and as such there will always be at least two assessors in every case.

Guidance is given in the Code of Practice at paragraphs 4.13 and 4.14 on issues for consideration in selecting and instructing assessors.

The supervisory body must instruct assessors to undertake assessments as swiftly as practicable after receiving a request for a standard authorisation. Any instruction should clearly set out the assessment(s) that are being sought by the supervisory body, the name and contact details of the other assessors (particularly important for the eligibility assessor where they are not also the best interests assessor) and the timescale for completion of the assessments. The maximum timescales for assessments are set out above.
East of England MCA RIN Best Interests and Mental Health Assessors Standards for Re-approval by Supervisory Bodies

Introduction:

It is a legal requirement that all Best Interests Assessors (BIA’s) and Mental Health Assessors (MHA’s) have ‘completed further training relevant to their role’ within each 12 month period prior to any Deprivation of Liberty Safeguards (DOLS) assessments they complete. Failure to do so would invalidate any DOLS assessments they subsequently undertake.

Supervisory bodies should ensure that sufficient assessors are available to meet their needs, and must be satisfied in each case that the assessors have the skills, experience, qualifications and training required by regulations to perform the function effectively.

The regulations also require supervisory bodies to be satisfied that there is an appropriate criminal record certificate issued in respect of an assessor. It will be useful to keep a record of qualified assessors and their experience and availability. Supervisory bodies should consider making arrangements to ensure that assessors have the necessary opportunities to maintain their skills and knowledge (of legal developments, for example) and share, audit and review their practice.

The EoE MCA RIN recommends that Supervisory Bodies should have evidence that as a minimum standard:

1. BIA’s must attend at least **18 hours training** on MCA/DOLS which must include an update on case law developments and any changes in legislation

2. For BIA’s who are also AMHP’s and undertake DOLS Eligibility Assessments, update training should also include an exploration of any developments on the interface between the MCA and the MHA

3. BIA’s must have completed appropriate assessments for (or at least evidentially shadowed another BIA) **three** DOLS authorisation requests. Where this opportunity does not exist locally for a BIA it is recommended that they seek opportunities from neighbouring Supervisory Bodies who should seek to accommodate such requests where possible.

4. BIA’s must attend a minimum of 2 local or regional BIA/DOLS forums where they have opportunities to refresh their knowledge of the Act and reflect on and discuss practice issues. This can be included within the 18 hours of relevant CPD

5. BIA’s must receive regular supervision (minimum of three monthly) in relation to DOLS practice

6. The training and development of individual BIA’s should be recognised in the appropriate professional appraisal process

7. **There is no legal requirements in the regulations for an approval process**, but **Regulation 3** of the Assessment Regulations sets out that a
supervisory body may only appoint an assessor (other than a person undertaking an age assessment) where they are satisfied that the person:

a) is insured in respect of any liabilities that might arise in connection with carrying out the assessment; and

b) has the skills and experience appropriate to the assessment he or she is to carry out.

In order to establish that a BIA has the skills and experience appropriate to the assessment, it is recommended that BIA’S must submit a portfolio summarising the evidence above to the Supervisory Body on an annual basis. It is recommended that portfolios should include a piece of reflective writing of about 500 words to demonstrate their learning in practice and from training and forum events. (A proforma for Portfolios is included in appendix 1).

Supervisory Bodies can not refuse to approve a BIA where they do not evidence competence in a reflective summary, if they have fulfilled the requirement to undertake required CPD.

Approval of BIA’s should be undertaken by a Senior Manager within the Supervisory Body. Supervisory Bodies must develop an appeal process should they decline to approve a BIA.

A Supervisory Body can commission a BIA approved by another Supervisory Body only where they can confirm that the BIA meets the minimum requirements to practice.

For Mental Health Assessors - within any 12 month period:

1. Mental Health Assessors (s12 DoLS Dr’s) must attend 18 hours of CPD/training on the MCA and DoLS. This could include
   a. An update on case law developments
   b. Information on any changes in the legislation
   c. Exploration of any developments on the interface between the MCA and the MHA

2. Mental Health Assessors must provide evidence of their further CPD training to each supervisory body that they wish to practice on behalf of a Supervisory Body

3. A Mental health Assessor must have completed a minimum of 1 DoLS assessment in the previous 12 month period to maintain their approval by a Supervisory Body

Template for submission of portfolio of evidence to a Supervisory Body