

## BOARD OF DIRECTORS MEETING (Open)

Date: 11<sup>th</sup> April 2018

Item Ref: 14 v

<b>TITLE OF PAPER</b>	Mental Capacity Act (MCA) & Deprivation of Liberty Safeguards (DoLS), Q3 Performance Report 2017/18, October to December 17
<b>TO BE PRESENTED BY</b>	Liz Lightbown, Executive Director of Nursing, Professions and Care Standards
<b>ACTION REQUIRED</b>	Members to receive for information and assurance.
<b>OUTCOME</b>	Members are assured that: the Mental Capacity Act (MCA) is Deprivation of Liberty Safeguards (DoLS) are being implemented in the Trust in line with the Mental Capacity Act 2005 and the respective Codes of Practice for the Act and DoLS; that CQC and Internal Audit requirements are being met; and patients' rights are being protected through correct recording, monitoring and careful scrutiny of practice data by the members of the Steering Group.
<b>TIMETABLE FOR DECISION</b>	April 2018 Meeting
<b>LINKS TO OTHER KEY REPORTS/ DECISIONS</b>	Report of the Mental Health Act Committee
<b>STRATEGIC AIM STRATEGIC OBJECTIVE BAF RISK NUMBER &amp; DESCRIPTION</b>	Strategic Aim: Quality and Safety Strategic Objective: A101: Effective quality assurance and improvement will underpin all we do.  BAF Risk Number: A101i BAF Risk Description: Inability to provide high quality care due to failure to meet regulatory standards (registration and compliance).
<b>LINKS TO NHS CONSTITUTION &amp; OTHER RELEVANT FRAMEWORKS, RISK, OUTCOMES ETC</b>	Mental Health Act Care Quality Commission Internal Audit
<b>IMPLICATIONS FOR SERVICE DELIVERY &amp; FINANCIAL IMPACT</b>	To maintain improvement in the implementation of the MCA and to preserve the rights of those subject to care delivered under the MCA and/or subject to Deprivation of Liberty Safeguards will require on-going monitoring of procedures and practice and recommendations for changes where necessary. If financial implications come to light, individual business cases will be submitted for consideration.
<b>CONSIDERATION OF LEGAL ISSUES</b>	It is a legal requirement that the Trust complies with the MCA/DoLS.
<b>Authors of Report</b>	Anita Winter and Anne Cook
<b>Designation</b>	Associate Director of Patient Safety and Head of Mental Health Legislation (HoMHL)
<b>Date of Report</b>	21 <sup>st</sup> February 2018

## SUMMARY REPORT

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**Report to:** BOARD OF DIRECTORS MEETING

**Date:** 11<sup>th</sup> April 2018

**Subject:** Mental Capacity Act and Deprivation of Liberty Safeguards  
Quarter 3 Performance Report 2017/18, October – December 2017

**Presented by:** Liz Lightbown, Executive Director of Nursing, Professions and Care Standards

**Authors:** Anita Winter, Associate Director of Patient Safety  
Anne Cook, Head of Mental Health Legislation

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### 1. Purpose

<i>For Approval</i>	<i>For a collective decision</i>	<i>To report progress</i>	<i>To seek input from</i>	<i>For information</i>	<i>Other (please state below)</i>
				✓	Assurance

### 2. Summary

This report was received and approved at the Executive Directors' Group (EDG) on 22<sup>nd</sup> February 2018, for information on performance in practice in respect of the Mental Capacity Act and its Deprivation of Liberty Safeguards. It was received at QAC on 26<sup>th</sup> February 2018 for information and assurance.

It is presented to the Quality Assurance Committee, to provide assurance that the use of the Mental Capacity Act 2005 (MCA) by the Trust is in accordance with both the Statute and Code of Practice (MCA Code of Practice 2007). Where necessary changes are recommended or made by the Steering Group to assure compliance.

The report is provided under the following headings:

1. Introduction
2. Internal Audit
3. The Law Commission and DoLS
4. The Group's work in Q3
5. The Trust's use of DoLS
6. Form CAT1 – Capacity to Consent to Admission and Treatment
7. Work Plan

### **3. Next Steps**

The MCA/DoLS Steering Group will continue to meet on a monthly basis and to submit a quarterly report to EDG, QAC and Board. On the conclusion of the current service reconfiguration its reporting structure and terms of reference will run parallel to those of the Mental Health Act Committee.

### **4. Required Actions**

Members to receive the report for information and assurance.

### **5. Monitoring Arrangements**

Monitoring of the Mental Capacity Act is the remit of the monthly Mental Capacity/DoLS Steering Group.

### **6. Contact Details**

For further information, please contact:

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## **Mental Capacity Act (MHA) & Deprivation of Liberty Safeguards (DoLS) Quarter 3 Performance Report, October to December 2017**

### 1. Introduction – The Mental Capacity Act (MCA) & Deprivation of Liberty (DoLS) Steering Group

The MCA/DoLS Steering Group meets on a monthly basis, chaired by Anita Winter, Associate Director of Patient Safety. The Group's objective is to ensure that practice in the Trust conforms to the requirements of all mental health legislation. The Steering Group is focused on ensuring that Trust staff develop their understanding of this legislation and apply it in safe and lawful practice.

On completion of the current service reconfiguration, the MCA/DoLS Steering Group will review its membership and its Terms of Reference. The Groups governance and reporting structures now mirror those of the Mental Health Act Committee, and these are linked by shared core membership, including the Head of Mental Health Legislation.

### 2. Internal Audit

#### 2.1 Progress against 2015/16 Audit

Progress against 360 Assurance Audit carried out in 2015/16 on MCA and DoLS continues. The only remaining outstanding area of work is the completion of the DoLS Audit. The audit tool has been developed and the audits are scheduled to be completed by the end of Quarter 4. The audits will examine the availability and quality of relevant DoLS documentation and the implementation of any attached conditions, and will be carried out by Grace Brennan, Trainee Clinical Psychologist, Community Learning Disability Team.

#### 2.2 360 Assurance Audit 2017/18

Fifteen days have been allocated to audit compliance with mental health legislation (MHA and MCA). The Terms of Reference have been agreed and the work will take place in three parts:

- Part One – five days for non-opinion supportive work to help the Trust establish robust governance and reporting arrangements at board sub-committee and feeding group level
- Part Two – five days for an assurance opinion piece on the robustness of the current MHA audit undertaken by the Trust
- Part Three – five days for an assurance opinion piece on the quality of MCA assessments and Best Interests documentation, plus the 2<sup>nd</sup> follow-up audit of the MCA.

The scope of the audit is limited to offering assurance opinions on these specific aspects of MHA and MCA systems. There will be no opinion offered on overall governance, although it is recommended by the auditors that this is subject to further internal audit on 2018/19.

A meeting took place with the Auditors in Quarter 3, and a draft preliminary report is expected early in Quarter 4.

### 2.3 Auditing Mental Capacity Assessments and Best Interests Decisions

The Steering Group developed an audit tool: Auditing Mental Capacity Assessments and Best Interests Decisions. This tool will ensure that there is a coordinated and consistent approach in place across the Trust and it has been made available for use in Sheffield Teaching Hospitals, Sheffield Council and the Clinical Commissioning Group. The Audit will form part of the Trust Audit Programme for 2017/18 and thereafter.

Initial audit findings from the audit resulted the Trust's Mental Capacity Act Assessment Form and Best Interests Record Forms (Insight forms) being amended and improved

In common with the findings of the National Forum, the Trust audit concluded that the MCA is not embedded in day to day processes, and therefore is not compliant with the Mental Capacity Act Code of Practice.

**Assurance:** In response to these findings, a single record of capacity and consent has been developed on the Insight system. It is intended to be in use across the Trust by the 31 January 2018, however training and implementation for IAPT Services will not be progressed until February 2018 due to the application of the process being less in-depth. See also 4.2.1 below.

### 3. The Law Commission and DoLS

The House of Lords Select Committee on the Mental Capacity Act 2005 described DoLS, as 'not fit for purpose, poorly drafted and overly complex'. Consequently, the Government asked the Law Commission to review the Mental Capacity Act and DoLS.

The Law Commission's final report and draft Bill were published in March 2017. Its main criticisms included the impact in terms of delays in granting authorisations resulting from the massive increase in the numbers affected as a consequence of the *Cheshire West* ruling.

The Government issued a briefing paper on in early October 2017; its response to the Law Commission's proposals is still awaited.

**Assurance:** The impact of *Cheshire West* and the complexity of the DoLS arrangements has affected all providers, including the Trust. The Steering Group is monitoring the use of DoLS, please see part 5 below.

### 4. The Group's Work in Q3

#### 4.1 Updates from Local and Regional Meetings

There are no updates from the Local or Regional meetings for this report

#### 4.2 Policies, Procedures and Guidance

The Steering Group has focussed on developing further guidance for staff which links to the following policy:

#### 4.2.1 Capacity and Consent to Care, Support and Treatment Policy

- The group is developing 'Standards for Recording Consent and/or Mental Capacity Act Assessment in Inpatient Wards' supported by a Legal Framework Decision Making Flowchart. This will not include decisions about medication given to detained patients (MHA) for treatment of their mental disorder or to ECT, for which different rules apply. This document will aim to set some auditable standards against which practice on inpatient wards can be measured. It is intended that this guidance will be available for use in Quarter 4 17/18.
- The group is also developing 'Guidance on Consent to Internal Referrals'. One of the topics of discussion that has arisen around the pilot is the issue of capacity to consent to internal referrals. Whilst it is clearly necessary to gain a service user's informed consent for a staff member to make an internal referral (in which case, the process is very straightforward), there are many service users who may lack to the mental capacity to give such informed consent. It is intended that this guidance will provide clarity to staff on the appropriate process for seeking consent to internal referral in order in order to avoid the process becoming meaningless and unmanageable.

**Assurance:** Assurance is limited currently. However, the development of the Insight forms and the training delivered to support it, along with increased reference to the MCA in MHA training is serving to raise awareness of the MCA and of the need to adhere to its principles in respect of all decisions other than those involving treatment for mental disorder of detained (MHA) patients. This increasing awareness is reflected in the number of queries raised in discussion in the MCA/DoLS Steering group, and requests for advice from the Head of MH Legislation.

#### 4.2.2 Training & Development

##### 4.2.2.1 Mandatory Training Compliance 2017/18

A summary of compliance achievement for 2017/18 is noted below:

Month	DoLS Level 1	DoLS Level 2	MCA Level 1	MCA Level 2
31 October 2017	62% (+7%)	81% (-2%)	88% (+2%)	84%
30 November 2017	68% (+6%)	82% (+1%)	89% (+1%)	84%
31 December 2017	70% (+2%)	90% (+8%)	90% (+1%)	81% (-3%)

DoLS and MCA Level 1 training are now available face-to-face on induction and mandatory training update as well as e-learning.

The reduction in MCA Level 2 is largely the result of recruitment to the IAPT service recently. 42 more staff now require this training and its updates.

**Assurance:** Compliance is on target in 3 of the 4 necessary areas, and climbing in the fourth. Unfortunately the plans to amalgamate update training for MCA, MHA and Clinical Risk Management have encountered some difficulties, including a lack of confidence in the trainers nominated by directorates to deliver the legal aspects of the training and the time commitment involved in delivering this training over a whole day. The Mandatory Training Steering Group is reviewing this issue.

### 4.3. Practice Development

As noted in the MHA Committee report, some practical steps are being taken towards developing practice under the MCA and the MHA in respect of both Statute and case law:

- MHA training sessions now include specific reference to the fact that any practice or intervention concerning the care and treatment of patients that is not governed by the MHA will, by definition, fall under the MCA
- Training continues to be delivered to all teams on the new MCA Insight forms for recording capacity and consent to treatment. These forms require consideration of which legal framework is appropriate and guide staff to the correct set of documents
- The current MCA/DoLS Practice Development Group workshops have now been adapted to incorporate a MHA aspect. The first joint session, was delivered on 9 October 2017, entitled 'Mental Health Tribunals and Mental Capacity'.
- The Steering Group has now incorporated 'Complex Case Discussion' as part of its standing agenda. This provides members with an opportunity to discuss live cases and explore their legal and ethical dilemmas.

**Assurance:** Assurance is limited currently, as recorded at 4.2.1.

#### 4.3.1 MCA/DoLS Practice Development Group (PDG)

The PDG is held on a quarterly basis, open to all interested staff. Where possible, each topic is delivered in line with the training delivery outcomes of MCA Level 1 and 2/DoLS Level 1 and 2.

The following topic has been delivered this quarter.

Date	Session Title
9 October 2017	Mental Health Tribunals and Mental Capacity

The session was well attended, and included input from the Advocacy services. The practice of Independent Mental Health Advocates in respect of referral to the MH Tribunal has been clarified and finalised as a result of this training.

A schedule of dates for 2018/19 has been agreed and publicized.

**Assurance:** Assurance is offered that practice in the Trust is now fully aligned with the law in that neither staff nor IMHAs are able to apply to the Tribunal on behalf of detained patients who do not have the capacity to do so for themselves, or to instruct another to do so.

#### 4.3.2 MCA Insight Form Development

Over the past 21 months the Steering Group has worked towards developing a new Consent and Capacity Form on Insight. This set of documents constitutes a means by which all relevant clinical and non-clinical decisions regarding capacity and consent (MCA and MHA) and best interests decisions (MCA only: the notion of best interests does not feature in the MHA) can be recorded in one central location. This will enable improved monitoring, audit and assurance of application of both the MCA and the MHA in this regard.

A comprehensive plan of training to all areas across the Trust continues to progress, with training being delivered by a member of the Insight Team and a clinician expert in the field of MCA in order that staff members receive a comprehensive overview. This is supported by a detailed help-sheet.

Completion of the form requires consideration of which legal framework (MHA or MCA) is appropriate and the system guides staff to the correct set of documents. This further reinforces the understanding of the two Acts and their complicated interface.

Use of the Consent and Capacity Form is now firmly embedded in the Learning Disabilities Directorate, but to speed-up the testing process CERT was included in the 'live pilot' from October 2017.

The Community Learning Disabilities Team continues to consider any similar specific circumstances or thresholds for making a formal record of capacity and consent and has extended the application of the form to the autism pathway.

The 'live' roll out across all trust areas is scheduled to be completed by 31 January 2018.

**Assurance:** The programme of training for staff in using the new forms is now complete, other than additional 'mop-up' sessions which will be provided during the period January to March 2018.

## 5. The Trust's Use of DoLS

### 5.1 Central Register for Recording DoLS Applications/Authorisations

The Steering Group established a system for recording all applications for DoLS made to the Supervisory Body at local level (Wards and Registered Care Homes) with central oversight from the Lead. In collaboration with the local DoLS Team, registers have been cleansed and updated.

The registers for each area are now be held centrally, located on the datastore, with each local manager (and/or nominated deputy) making changes directly to this. These registers are being actively monitored by the Mental Health Act Office.

Whilst recognising that this is a new way of working, it is apparent that maintenance of the spread-sheets at local level is not always undertaken in a timely manner, and it has been necessary for the Head of Mental Health Legislation to cross check Insight records of current residents with the registers and to contact the care areas for clarification. For this reason, the exact status for Birch Avenue is incomplete below. Despite this difficulty, it is evident that the Trust has applied for DoLS authorisations in every instance, thereby fulfilling its duty.

**Assurance:** Assurance is offered that the Trust has applied in all instances for DoLS authorisation in the areas it manages. Through no fault of the Trust, there are many applications outstanding, and some that have expired, but the Trust has fulfilled its obligations to apply for authorisations and the care areas take action to follow-up expired orders. Expired orders seem not to attract any priority by the Local Authority DoLS Team, although they appear to be noted by that team.

Assurance is limited in respect of Deprivation of Liberty pursuant to an order from the Court of Protection in settings other than hospitals and registered care homes and in respect of the duty of Trust staff to provide evidence or information either to the court or, in the case of non-court authorised DoL, to the supervisory body.

Acquiring comprehensive information and developing an Insight system to record orders and generate alerts for necessary actions, expiry etc is a priority for the Head of MH Legislation.

A summary by area of the DoLS Authorisations in place is detailed below.

For Buckwood View, Birch Avenue and Woodland View it would be expected that all residents would require a DoLS authorisation, as it is unlikely that any resident would have capacity to decide about their place of residence.

In the remaining services, detention under the MHA is more likely.

Service Area	No of Beds	No of Beds Occupied	Authorisations requested	Authorisations in place	Notes
Buckwood View Nursing Care Home	18	18	18	7	9 expired 2 awaiting decisions
Birch Avenue Nursing Care Home	40	37	37	12	Further check required to establish current status of applications
Woodland View Beech Cottage	15	14	14	3	11 awaiting decisions
Woodland View Oak Cottage	15	14	13	1	1 expired 10 awaiting decisions 1 application in process
Woodland View Willow Cottage	15	15	14	2	1 expired 11 awaiting decisions 1 resident consenting
Assessment & Treatment Service	7	No DoLS requirement currently			
Dovedale Ward	18	No DoLS requirement currently			
G1	16	No DoLS requirement currently			
Stanage Ward	18	No DoLS requirement currently			
Burbage Ward*	14	No DoLS requirement currently			
Forest Close 1A	14	No DoLS requirement currently			
Forest Close 1	8	No DoLS requirement currently			
Forest Close 2	8	No DoLS requirement currently			
Forest Lodge (Assess)	11	No DoLS requirement currently			
Forest Lodge (Rehab)	11	No DoLS requirement currently			
Endcliffe Ward	10	No DoLS requirement currently			
Maple Ward*	17	No DoLS requirement currently			

\* Burbage Ward has 5 detox beds in addition, these are always occupied with consent; Maple Ward has 2 Place of safety beds, these are always occupied by patients subject to s135/6 MHA

A priority area of work for the Steering Group in Quarter 4 is to enable the trust to identify how many challenges to DoLS applications have been taken to the Court of Protection and to establish a clear and transparent process for the trust to follow. This is a requirement of the Internal Audit.

## 6. Form CAT1 (Consent to Admission and Treatment 1)

Form CAT1 determines whether a person is giving informed consent to informal admission under s131 of the Mental Health Act, therefore the use of CAT1 is reported on by the MHA Committee. The MCA/DoLS Steering Group also monitors the implementation of the CAT1 as one component of the suite of capacity and consent forms to be included on Insight as it involves capacity to decide; lack of capacity may result in detention under the MHA or in Deprivation of Liberty under the MCA/DoLS. For this reason, the report is also presented here.

CAT1 will be rolled out as an Insight form early in the New Year. It should be completed prior to admission, as completion after the patient has arrived on the ward may lead to a period of unauthorised deprivation of liberty if it transpires that the patient either lacks capacity to consent, or has capacity and does not in fact consent to the restrictions on their liberty that informal admission entails.

Although CAT1 is used for informal substance detoxification admissions, the statements on it are not entirely relevant to the 'contractual' nature of a detox admission. For example, the references to possible detention on CAT1 are unlikely to apply, given that detention is not lawful for substance misuse in the absence of further mental disorder. For this reason, the detox admissions are excluded from the table below, however, despite its shortcomings, all detox patients had a CAT1 completed before or on the day of admission.

Since November 2017, the Mental Health Act office has been monitoring the use of CAT1.

CAT1 (excluding detox admissions)

Month	No of informal admissions	CAT1 completed before admission	CAT1 completed after admission	Unable to determine
November	14	5	9	0
December	11*	3	7	1

\* This excludes 1 patient who self-presented to a ward, and 1 patient transferred in from Rotherham, who had a clear statement of capacity to consent to admission.

**Assurance:** Assurance is limited. It is evident that the use of CAT1 is not yet embedded in practice, and it can be assumed that staff members who are managing access to beds are not ascertaining that CAT1 has been completed prior to admission.

## 7. Work Plan

The Steering Group Work Plan has been reviewed and updated for 2017/18. A copy is attached at Appendix 1.

# MENTAL CAPACITY ACT (MCA)/ DEPRIVATION OF LIBERTY STEERING GROUP PRIORITY WORK PLAN 2017/18

Update November 2017

## PRIORITY WORK PLAN 2017/18 FOR AGREEMENT BY EDG AND THE BOARD OF DIRECTORS

A written quarterly update report will be submitted to the EDG/Board of Directors' to monitor progression of the Work Plan 2017/2018. The report will include related issues and incidents within the Trust, actions taken and outcomes. These exceptions will be highlighted in the quarterly reports. Assurance will, therefore, be provided that the Trust has taken the appropriate actions in relation to MCA/Deprivation of Liberty and is responding to issues identified through continued monitoring.

The design of this programme is to ensure continued and effective implementation of the Mental Capacity Act (MCA) and Deprivation of Liberty Legislation across all SHSC Directorates through active Directorate Steering Group membership and leadership to assure the Board that the legal duties of the organisation are delivered.

KEY	
	<b>Action complete:</b> evidence available
	<b>Action complete:</b> evidence being compiled
	<b>Action on track:</b> will progress to timescale
	<b>Action off track:</b> subject to executive escalation

**SECTION 1 – POLICIES, PROCEDURES & GUIDANCE**

NO	ACTION	LEAD	TIMESCALES	STATUS	UPDATE
1.1	<p>Capacity and Consent to Care, Support and Treatment Policy.</p> <p>Clarity is required on the Trust expectations for when 'formal' documentation of consent/capacity is required and when a reference in progress notes is appropriate.</p>	Zara Clarke & Anita Winter	June 2017	<b>BLUE</b>	<p>Tabled for discussion at May 2017 Steering Group.</p> <p>Draft guidance drafted, discussed and agreed at the August 2017 Steering Group.</p> <p>Guidance to be reformatted into SOP and taken to September Policy Governance Group for agreement then distribution across the trust.</p> <p>SOP agreed and disseminated across trust; copy of SOP placed on MCA intranet page and on policy page.</p>
1.2	Continue to review the Mental Capacity Act Deprivation of Liberty Safeguards Policy to include further practical guidance/refer to the Intranet page and specify the monitoring arrangements.	Anita Winter & Ronda Ninkovic	August 2017	<b>BLUE</b>	<p>Policy reviewed in light of the Chief Coroners Guidance DoLS published and in force for 3 April 2017. Changes publicised through a variety of routes. Policy amendments to be made by 31 May 2017.</p> <p>Policy fully reviewed and tabled for discussion at the August 2017 Steering Group.</p> <p>Policy amended by Anne Cook in light of comments – to be signed off at September Steering Group.</p> <p>Policy signed off.</p>
1.3	To continue to review the Advance Decisions to Refuse Treatment/Advance	Anita Winter & Zara Clarke	September 2017	<b>YELLOW</b>	Task & Finish Group established to review current Insight data, develop and

	Statements Policy.				<p>implement audit.</p> <p>Advance Statement Form reviewed and updated "Telling us how you would like to be treated by SHSC" tabled for discussion at the August 2017 Steering Group. The form is to help service users to tell the trust, at a time when they are able to express their wishes, about what is important to them and how they would like to be cared for and treated at a time in future when they are not so well and have become unable to express their wishes. Comments noted. To be tabled for final agreement at the September 2017 Steering Group.</p> <p>Further amendments suggested and form to be amended. Form also piloted in CLDT.</p>
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**SECTION 2 – TRAINING AND DEVELOPMENT**

NO	ACTION	LEAD	TIMESCALES	STATUS	UPDATE
2.1	Review the MCA training competence allocation for all grades of staff.	Jennie Wilson, Bob Levesley, Zara Clarke	August 2017	<b>BLUE</b>	<p>Review of competence allocation scheduled for discussion at the June Steering Group.</p> <p>Tabled for discussion with no amendments made to existing allocations.</p>
2.2	Training compliance rates to be improved and the impact of training on staff understanding to be assessed.	Jennie Wilson, Bob Levesley, Zara Clarke	April 2017	<b>BLUE</b>	<p>MCA Level 1 to be incorporated into Trust Mandatory Training Day and New Starter Induction Day with effect from April 2017</p> <p>Mandatory Training compliance as at 30 April 2017:</p> <ul style="list-style-type: none"> <li>• MCA Level 1 72%</li> <li>• MCA Level 2 – 72%</li> <li>• DoLS Level 1 – 90%</li> <li>• DoLS Level 2 – 82%</li> </ul> <p>Mandatory Training compliance as at 31 May 2017:</p> <ul style="list-style-type: none"> <li>• MCA Level 1 74%</li> <li>• MCA Level 2 – 75%</li> <li>• DoLS Level 1 – 90%</li> <li>• DoLS Level 2 – 80%</li> </ul> <p>Mandatory Training compliance as at 30 June 2017:</p> <ul style="list-style-type: none"> <li>• MCA Level 1 81%</li> <li>• MCA Level 2 – 79%</li> <li>• DoLS Level 1 – 92%</li> <li>• DoLS Level 2 – 85%</li> </ul> <p>Mandatory Training compliance as at 31</p>

**SECTION 2 – TRAINING AND DEVELOPMENT**

NO	ACTION	LEAD	TIMESCALES	STATUS	UPDATE
					<p>July 2017:</p> <ul style="list-style-type: none"> <li>• MCA Level 1 84%</li> <li>• MCA Level 2 – 82%</li> <li>• DoLS Level 1 – 92%</li> <li>• DoLS Level 2 – 84%</li> </ul> <p>Mandatory Training compliance as at 30 August 2017:</p> <ul style="list-style-type: none"> <li>• MCA Level 1 85%</li> <li>• MCA Level 2 – 83%</li> <li>• DoLS Level 1 – 95%</li> <li>• DoLS Level 2 – 84%</li> </ul> <p>Mandatory Training compliance as at 30 September 2017:</p> <ul style="list-style-type: none"> <li>• MCA Level 1 86%</li> <li>• MCA Level 2 – 84%</li> <li>• DoLS Level 1 – 55%</li> <li>• DoLS Level 2 – 83%</li> </ul> <p>Mandatory Training compliance as at 31 October 2017:</p> <ul style="list-style-type: none"> <li>• MCA Level 1 88%</li> <li>• MCA Level 2 – 84%</li> <li>• DoLS Level 1 – 62%</li> <li>• DoLS Level 2 – 81%</li> </ul> <p>DoLS and MCA Level 1 is now available face-to-face on induction and mandatory training update as well as e-learning.</p> <p>Mandatory Training compliance as at 30 November 2017:</p>

**SECTION 2 – TRAINING AND DEVELOPMENT**

NO	ACTION	LEAD	TIMESCALES	STATUS	UPDATE
					<ul style="list-style-type: none"> <li>• MCA Level 1 88%</li> <li>• MCA Level 2 – 84%</li> <li>• DoLS Level 1 – 62%</li> <li>• DoLS Level 2 – 81%</li> </ul> <p>DoLS and MCA Level 1 is now available face-to-face on induction and mandatory training update as well as e-learning.</p>
2.3	Review the MCA training module.	Zara Clarke & Bob Levesley	May 2017	BLUE	<p>Training module currently under review.</p> <p>Training module reviewed and in use.</p>
2.4	Increase MCA pool of training facilitators	Jennie Wilson, Bob Levesley, Zara Clarke	May 2017	BLUE	<p>Training and Development Team have received training to deliver MCA Level 1 as part of Trust Induction and Mandatory Training Day.</p> <p>Triple programme (MHA/MCA/Clinical Risk) will further increase the pool of trainers.</p> <p>In terms of MCA training development a three-year training plan was developed and agreed by EDG which includes the following key areas:</p> <ul style="list-style-type: none"> <li>• <b>Qualified Clinical Staff Mandatory Training Update Day for Non-inpatient Services</b></li> </ul> <p>Staff in professional roles in non-inpatient services will be required to attend this training every three years. Subjects covered are: Clinical Risk Update, MCA</p>

**SECTION 2 – TRAINING AND DEVELOPMENT**

NO	ACTION	LEAD	TIMESCALES	STATUS	UPDATE
					<p>Level 2 and MHA (assumes a CQC requirement for MHA training to be wider than just in-patient nurses and provided to all professional staff).</p> <p>This is a one-day course and approximately 780 staff will need to attend this. This means that 260 staff per year will be required to attend training. Therefore the plan is to hold 13 courses per year, 20 staff per course.</p> <p>Trainers from outside ETD will be needed to deliver this course so the Steering Group will be looking to key individuals from directorates to support this. This course will need to start to run at this frequency from December 2017.</p> <ul style="list-style-type: none"> <li> <b>Qualified Clinical Staff Mandatory Training Update Day for Inpatient Services</b> </li> </ul> <p>Staff in professional roles working in in-patient services (primarily but not exclusively nurses e.g. also includes physiotherapists, psychologists etc.) will need attend this training every 3 years. Subjects covered are: Clinical Risk Update, MCA Level 2 and MHA (specific for in-patient nurses).</p> <p>This is a one-day course and</p>

**SECTION 2 – TRAINING AND DEVELOPMENT**

NO	ACTION	LEAD	TIMESCALES	STATUS	UPDATE
					<p>approximately 170 staff will need to attend this. This means that 57 staff per year will be required to attend training. Therefore the plan is to hold three courses per year, 19 staff per course.</p> <p>Trainers from outside ETD will be needed to deliver this course so the Steering Group will be looking to key individuals from directorates to support this. This course will need to start to run at this frequency from December 2017.</p> <p>Currently we are looking at options for combining the 3 subjects. The update for all 3 subjects will take no more than one working day. Options will be tabled at the Mandatory Training Steering Group on 13 November 2017.</p> <p>Combining the subjects allows for a greater understanding of how these subjects interact and allows staff to understand the combined application into practice as well as reducing staff release time for update training (by one day per every 3 year cycle).</p>
2.4	To ensure staff are recording consent/ capacity as expected through the training provided; to accompany roll-out of the 'form' and continuation of audit of forms.	Zara Clarke & Bob Levesley	June 2017	<b>BLUE</b>	<p>Tabled for discussion at May 2017 Steering Group.</p> <p>Guidance to be reformatted into SOP and taken to September Policy Group for agreement then distribution across the trust.</p>

**SECTION 2 – TRAINING AND DEVELOPMENT**

NO	ACTION	LEAD	TIMESCALES	STATUS	UPDATE
					SOP agreed and disseminated across trust; copy of SOP placed on MCA intranet page and on policy page.

### SECTION 3 – PRACTICE DEVELOPMENT

NO	ACTION	LEAD	TIMESCALES	STATUS	UPDATE
3.1	Undertake an audit of Advance Decisions to Refuse Treatment/Advance Statements currently in use situ across the trust to understand activity.	Anita Winter/Zara Clarke	July 2017	GREEN	<ul style="list-style-type: none"> <li>Insight statistics obtained for Advance Decisions to Refuse Treatment/Advance Statements. 563 episodes in total identified 113 noted as multiple. Task and Finish Group established to audit these.</li> <li>Work is underway to update the Trust's form for recording decisions made in advance; the original form pre-dated the MCA and is no longer suitable for distinguishing between the formality of an Advance Decisions and the broader concept of wishes expressed in advance. A draft version of the form is currently being piloted in Learning Disabilities and in Acute Wards.</li> </ul>
3.2	Agree a rolling programme of Audits for Capacity Assessments and Best Interest Decisions.	Anita Winter / Julia Walsh / Zara Clarke	June 2017	BLUE	<ul style="list-style-type: none"> <li>4<sup>th</sup> iteration of audit report in situ with audit report to be shared by 31 May 2017.</li> <li>Audit report complete. Initial audit findings indicated that the current Capacity and Best Interests Decisions forms could be updated in order to support better practice and more focused recording. The Mental Capacity Act Assessment Form and Best Interests Record Forms have been amended as a result and uploaded onto the MCA page of the Intranet and both forms are available as word documents on Insight the</li> </ul>

					<p>availability of which has been publicised across the trust through a variety of routes.</p> <p>The audit confirmed that:</p> <ul style="list-style-type: none"> <li>• The Mental Capacity Act is not embedded in day to day practice such as in the recording of mental capacity assessments is not consistent and in line with the Mental Capacity Act Code of Practice.</li> <li>• Where a best interest discussion takes place because a client lacks capacity to make a decision, this should be recorded appropriately, but it was not being carried out as standard practice.</li> <li>• MCA/DoLS is identified as part of the trust's Annual Audit Programme.</li> <li>• Trainee Psychologist will undertake an audit of MCA and DoLS in Q3/4.</li> </ul>
3.3	<p>The Trust to establish a programme of audit around DoLS which may include audits around:</p> <ul style="list-style-type: none"> <li>- Availability of DoLS documentation in patient record</li> <li>- Quality of Form 1 &amp; Form 4s submitted</li> <li>- Implementation of conditions attached to authorisations</li> </ul>	Anita Winter /Julia Walsh/ Ronda Ninkovic	Timescale revised to May 2017	<b>YELLOW</b>	<ul style="list-style-type: none"> <li>• V1 draft audit tool presented for comments at Steering Group on 13/03/17.</li> <li>• V2 draft audit tool drafted.</li> <li>• V4 draft audit tool drafted.</li> <li>• V5 audit tool agreed at the Steering Group and now forms an Appendix to the DoLS Policy. Whilst the DoLS audit tool has been developed this is an untouched area, and now a priority area of work for the Steering Group to take place in quarter 3 and 4 2017/18.</li> </ul>

					<p>The programme of audit for DoLS will include:</p> <ul style="list-style-type: none"> <li>• Availability of DoLS documentation in service user records</li> <li>• Quality of Form 1 &amp; Form 4's submitted (these are the forms used to make applications for Deprivation of Liberty Authorisations)</li> <li>• Implementation of conditions attached to authorisations.</li> <li>• A trainee Psychologist will undertake the audit.</li> </ul>
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#### SECTION 4 – SERVICE USER AND FAMILY CARER AWARENESS

NO	ACTION	LEAD	TIMESCALES	STATUS	UPDATE
4.1	Development/availability of guidance for clients and family carers.	Jane Lyon / Julia Walsh	March 2018	YELLOW	
4.2	Development and delivery of Awareness training.	Julia Walsh/ Karen Dickinson	March 2018	YELLOW	
4.3	Develop a plan of engagement.	Jane Lyon / Julia Walsh	August 2017	YELLOW	<p>The MCA/DoLS PDG session on the 4 July 2017 will be used to begin this discussion.</p> <p>Draft plan of engagement developed and scheduled for discussion and agreement at August 2017 Steering Group.</p> <p>Due to full agenda the draft plan of engagement was not signed off until final feedback was received at September 2017 Steering Group.</p> <p>An action plan has been developed as a result and focuses on the following key themes:</p> <ul style="list-style-type: none"> <li>• Development/availability of guidance for service users and family carers</li> <li>• Development and delivery of awareness training.</li> <li>• A Task and Finish Group will be established following the trust restructure with identified representatives from key areas to progress the action plan.</li> </ul>

**SECTION 5 – COMMUNICATION**

NO	ACTION	LEAD	TIMESCALES	STATUS	UPDATE
5.1	Development and roll out of Insight Module.	Anita Winter / Cath Dixon	On-going	GREEN	<ul style="list-style-type: none"> <li>• March 2017 Session held to discuss 360 Audit suggestions for streamlining the proposed Insight form to make it as straightforward for staff to complete as possible. Suggestions considered and discounted.</li> <li>• April 2017 - The Insight form to record Capacity and consent has now been tested by key clinicians for its suitability and bugs in the system have been flagged. The report view is being finalised and we will move forward to pilot phase in May 2017.</li> <li>• Training sessions to support the pilot of the new Insight module for LD ATS and CLDT scheduled to take place during June/July 2017.</li> <li>• Training sessions for LD completed by 31 July 2017 with mop-up sessions.</li> <li>• Roll out plan underway – August 2017 confirmed bookings for Woodland View, Birch Avenue, and G1.</li> <li>• A Consent and Capacity Help Sheet has been developed to support staff - accessed via the Intranet &gt; ICT Dept &gt; See All &gt; Insight Help Sheets &gt;</li> <li>• A training programme is underway, and full roll-out across Trust scheduled for completion by 31 December 2017.</li> </ul>

5.2	Insight module roll-out plan to be developed and publicised across the trust.	Anita Winter/ Simon Robinson/ Directorate Leads	June 2017	<b>GREEN</b>	<ul style="list-style-type: none"> <li>• Directorate representatives requested at May 2017 Steering Group to identify team order of roll out.</li> <li>• Roll out plan underway with areas being updated on a month by month basis.</li> <li>• A 'live' pilot of the MCA Insight forms commenced on 20 September 2017 in Learning Disabilities: Assessment and Treatment Service (ATS), Community Learning Disability Team (CLDT) and the Community Intensive Support Service (CISS).</li> <li>• IT colleagues require 20-30 completed MCA forms to be completed in order to iron out any technical issues before further roll out. However, CERT will now be included in the 'live pilot' from October 2017 to speed up the testing process. The 'live' roll out across all trust areas is scheduled to be completed 31 January 2018.</li> <li>•</li> </ul>
5.3	Each Directorate to develop local guidance on key pathways to support implementation of new Insight module.	All Steering Group Leads	April 2017 to August 2017	<b>YELLOW</b>	
	<p>Learning Disabilities:</p> <ul style="list-style-type: none"> <li>• S&amp;LT</li> <li>• Community Nursing</li> <li>• Psychology</li> <li>• Physiotherapy</li> <li>• OT</li> <li>• Clinical Allocation and Review Meeting</li> </ul>	Anita Winter & Zara Clarke (with local clinical leads)	May 2017	<b>BLUE</b>	<ul style="list-style-type: none"> <li>• Workshop sessions scheduled to take place with all professional groups during March 2017</li> <li>• LD met with professional groups (Community Nursing, S&amp;LT, and Psychology) to focus on agreeing key decision points for consent, capacity and best interests specifically around key pathways, for example, Head to Toe Assessments. Standard Operating Protocols have been</li> </ul>

					<p>developed as a result</p> <ul style="list-style-type: none"> <li>• LD has reviewed processes at the Clinical Allocation and Review Meeting for consideration and recording of Consent; Capacity and Best Interests Records.</li> <li>• April LD met with Physiotherapy professional group to focus on agreeing key decision points for consent, capacity and best interests specifically around key pathways, for example, Head to Toe Assessments. Standard Operating Protocols have been developed as a result.</li> </ul>
	Specialist Directorate		Tony Bainbridge / Chris Woods	RED	
	Inpatient Directorate		Lorena Caine	BLUE	<ul style="list-style-type: none"> <li>• Pathway agreed as established within the current CAT guidance.</li> </ul>
	Community Directorate		Paul Nicholson	RED	

## SECTION 6 – HUMAN RESOURCES

NO	ACTION	LEAD	TIMESCALES	STATUS	UPDATE
6.2	All staff to be made aware of the need to include MCA as a standing item in PDR's for all relevant staff. Consult with the PDR Team to develop appropriate prompt to incorporate into the Trust PDR Electronic Paperwork. E-mail <a href="mailto:PDR.Team@shsc.nhs.uk">PDR.Team@shsc.nhs.uk</a>	MCA Steering Group PDR Representative I.T Representative	Revised timescale to December 2016	RED	No progress made.  Since the introduction of the Work Plan there has been evidence of increased application of the Mental Capacity Act and it was agreed by Steering Group members that this action was no longer appropriate. However, a meeting is scheduled to be held in November 2017 with HR colleagues to discuss further.
6.3	Advertise changes to PDR paperwork through the MCA newsletter	MCA Steering Group	Revised timescale to December 2015	RED	No progress made.  Since the introduction of the Work Plan there has been evidence of increased application of the Mental Capacity Act and it was agreed by Steering Group members that this action was no longer appropriate. However, a meeting is scheduled to be held in November 2017 with HR colleagues to discuss further.

## SECTION 7 – GOVERNANCE

NO	ACTION	LEAD	TIMESCALES	STATUS	UPDATE
7.1	Ensure the group takes responsibility for information monitoring and reporting on DoLS /MCA	MCA Steering Group	On-going	<b>BLUE</b>	<ul style="list-style-type: none"> <li>Monitoring of training data underway.</li> <li>Monitoring of training data standing agenda item at Steering Group.</li> <li>Feedback to the Steering Group on DoLS authorisation data commenced September 2017</li> </ul>
7.2	To develop a system where Power of Attorney issues are “flagged” on Insight.	MCA Steering Group, I.T & Information Governance	Timescale revised and carried forward to August 2017	<b>YELLOW</b>	<ul style="list-style-type: none"> <li>To consider including data on ‘Deputies’.</li> </ul>
7.4	The central register for DoLS application to be finalised and wards/ care homes to start updating it with all DoLS activity.	Anita Winter/Anne Cook	June 2017	<b>GREEN</b>	<ul style="list-style-type: none"> <li>To meet with MHA Office to discuss business support capacity to support register monitoring.</li> <li>Register finalised and up-to-date.</li> <li>The Steering Group established a system for recording all applications for DoLS made to the Supervisory Body at local level (Wards and Registered Care Homes) with central oversight from the Lead. In collaboration with the local DoLS Team, registers have been cleansed and updated.</li> <li>The registers for each area will now be held centrally, located on the datastore, with each local manager (and/or nominated deputy) making changes directly to this. These registers will be monitored by the Mental Health Act Office Commencing</li> </ul>

					<p>October 2017. Monitoring will include:</p> <ul style="list-style-type: none"> <li>• number of applications made by area</li> <li>• current status and renewal dates</li> <li>• conditions set and are these being met</li> </ul> <p>A priority area of work for the Steering Group in quarter 4 is to enable the trust to identify how many challenges to DoLS applications have been taken to the Court of Protection and to establish a clear and transparent process for the trust to follow.</p>
7.6	The register will be regularly reviewed to identify where granted authorisations are due to expire and, where appropriate, requests for reviews should be made to SCC.	Anita Winter/Anne Cook	On-going	<b>GREEN</b>	<ul style="list-style-type: none"> <li>• Dialogue with Directorates underway to agree protocol for regular review and update or register. Presently register is updated centrally.</li> <li>• The registers for each area will now be held centrally, located on the datastore, with each local manager (and/or nominated deputy) making changes directly to this. These registers will be monitored by the Mental Health Act Office Commencing October 2017.</li> </ul>
7.8	The figures above, along with the detail provided to the Trust MCA & DoLS Lead to be reviewed within each team to determine if there are more service users in respect of whom DoLS applications should be made.	Anita Winter /Anne Cook and MCA/DoLS Steering Group Divisional Representatives	30 April 2016	<b>GREEN</b>	<ul style="list-style-type: none"> <li>• Dialogue with Directorates underway to agree protocol for regular review and update or register.</li> <li>• The registers for each area will now be held centrally, located on the datastore, with each local manager (and/or nominated deputy) making changes directly to this. These registers will be monitored by the Mental Health Act Office Commencing</li> </ul>

					October 2017.
7.9	<p>Ensure regular reports are produced for the MCA DoLS Steering Group which cover:</p> <ul style="list-style-type: none"> <li>• The numbers of DoLS applications made from each area and the current status;</li> <li>• The results of any audits around DoLS;</li> <li>• Numbers of staff trained and feedback from training;</li> <li>• Updates on any legal challenges in respect of patients subject to DoLS;</li> </ul>	Anita Winter/Anne Cook	Monthly	<b>GREEN</b>	<ul style="list-style-type: none"> <li>• A programme of reporting has progressed commencing with staff training.</li> </ul>
7.10	<p>The MCA DoLS Steering Group to provide a quarterly update to EDG/Board or the Quality Committee which covers:</p> <ul style="list-style-type: none"> <li>• Number of DoLS applied for per quarter &amp; number authorised/not authorised</li> <li>• Delays in authorising DoLS (due to demands on SCC) and what the Trust is doing to mitigate risk of legal action</li> <li>• Training progress update (although senior committees receive Mandatory training update which shows DoLS level 1 and level 2 compliance)</li> <li>• Results of audits which monitor compliance with requirements of legislation and policy.</li> </ul>	Anita Winter/Anne Cook	Monthly	<b>GREEN</b>	<p>Next quarterly report scheduled for submission in June 2017</p> <p>Mental Capacity Act and Deprivation of Liberty Steering Group Quarter 2 Report, July to September 2017 is scheduled for discussion at EDG on 16 November 2017.</p> <p>Mental Capacity Act and Deprivation of Liberty Steering Group Quarter 2 Report, July to September 2017 submitted to EDG/QAC on 16 November 2017.</p>

	The most recent iteration of the workplan should also be included.				
7.11	MCA: The 'form' within Insight to be rolled out to provide a consistent methodology for recording (we have provided some suggestions for streamlining the proposed form to make it as straightforward for staff to complete as possible).	Anita Winter	April 2017	BLUE	Auditor comments reviewed, considered and discounted by key leads.  No further action required.

Anita Winter  
Service Director / MCA Lead

Updated March 2017 by Anita Winter on behalf of Steering Group  
Update April 2017 by Anita winter on behalf of Steering Group  
Update May 2017 by Anita Winter on behalf of Steering Group  
Updated June 2017 by Anita Winter on behalf of Steering Group  
Updated July 2017 by Anita Winter on behalf of Steering Group  
Updated August 2017 by Anita Winter on behalf of Steering Group  
Updated September 2017 by Anita Winter on behalf of Steering Group  
Updated October 2017 by Anita Winter on behalf of Steering Group  
Updated November 2017 by Anita Winter on behalf of Steering Group