

## 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 experience<sup>1</sup>
- 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.

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<sup>1</sup> As defined by the regulations.

	<b>Key Capability 1: The ability to apply in practice, and maintain knowledge of, relevant legal and policy frameworks</b>	
Underlying expectations	<p>The Best Interest Assessor (BIA) has:</p> <p>1.1 A working knowledge of:</p> <ul style="list-style-type: none"> <li>(i) Mental capacity legislation and the Deprivation of Liberty Safeguards (DoLS), their related codes of practice, national and local policy guidance</li> <li>(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</li> <li>(iii) Relevant case law and its application in practice</li> <li>(iv) The developing concept of deprivation of liberty</li> <li>(vi) The legal position and accountability of DoLS/BIAs in relation to the MCA, any employing organisation and the authority on whose behalf they are acting.</li> </ul>	<p>1.2 The ability to:</p> <ul style="list-style-type: none"> <li>(i) Base DoLS/BIA practice on a critical evaluation of a range of case law and research relevant to evidence-based practice</li> <li>(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</li> <li>(iii) Analyse and critically reflect on personal practice in order to identify achievements and opportunities for further development</li> <li>(iv) Exercise the appropriate use of independence, authority and autonomy and use it to inform their future practice as a BIA</li> <li>(v) Work within their area of competence, seeking further advice as appropriate</li> </ul>

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

		(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.
	<b>Key Capability 3: The ability to take all practical steps to help someone to make a decision</b>	
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"> <li>(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</li> <li>(ii) The social impact of the disability or condition, how this impacts on the relevant person, the family, carers, and the decision making process</li> <li>(iii) The role of the Independent Mental Capacity Advocate (IMCA) within the DoLS process, and the circumstances in which an IMCA should be appointed</li> </ul>	<p>3.2 The ability to:</p> <ul style="list-style-type: none"> <li>(i) Communicate skilfully and confidently in the context of a DoLS assessment</li> <li>(ii) Utilise a range of approaches to sustain engagement with people whose capacity and ability to communicate may fluctuate, or be very limited</li> <li>(iii) Enable the person to contribute to the decision making process as far as is possible given the circumstances of the case</li> </ul>

	(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.
	<b>Key Capability 4: The ability to balance a person's right to autonomy and self-determination with their right to safety, and respond proportionately</b>	
Unwise decisions	<p>The BIA is able to demonstrate:</p> <p>4.1 An understanding of:</p> <ul style="list-style-type: none"> <li>(i) The MCA in relation to the impact of unwise decisions</li> <li>(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</li> <li>(iii) The impact of coercion and power imbalances on people's abilities to make informed decisions.</li> </ul>	<p>4.2 The ability to:</p> <ul style="list-style-type: none"> <li>(i) Carry out work with individuals that is person centred and promotes choice and autonomy, while considering issues of risks and proportionality</li> <li>(ii) Be alert for the need for assessment under the MHA where relevant persons are ineligible for DoLS</li> <li>(iii) Make appropriate safeguarding referrals.</li> </ul>

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

		<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><b>Key Capability 6: The ability to effectively assess risk, in complex situations, and use analysis to make proportionate decisions</b></p>	
Least restrictive options	<p>The BIA can demonstrate:</p> <p>6.1 An understanding of:</p> <ul style="list-style-type: none"> <li>(i) Risk, how to assess risk, likelihood and seriousness of risk, proportionate responses to managing risk</li> <li>(ii) The benefits of positive risk taking.</li> </ul>	<p>6.2 An ability to:</p> <ul style="list-style-type: none"> <li>(i) Weigh up the pros and cons of the different options in the light of best interests and risk assessment</li> <li>(ii) Identify risk, and consider its management in a less restrictive manner (if possible) to arrive at a proportionate outcome</li> <li>(iii) Evidence in their report an analysis of risk</li> </ul>

		<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>
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