



Independent Mental Capacity Advocacy

Do you know someone who has capacity problems? Are they possibly facing a decision relating to **residence-change** or **serious medical treatment**, and are 'unbefriended'? If so, then please make a referral to us. These referrals are *obligatory* under the Mental Capacity Act (2005) - Please phone **0845 680 0513** (for Warrington, St Helens, Knowsley and Halton) or **0161 872 6825** (for Bolton, Salford and Trafford).

Did you know?

- ◆ The IMCA service you should approach is the one which operates in the local authority where the person is *geographically located*, at the time of referral. eg. they may be in a out-of-area hospital etc
- ◆ Paragraph **10.79** of the MCA Code of Practice says that persons are not inappropriate to consult, simply if they disagree with the decision-maker!
- ◆ The Court of Protection is separate to the Office of the Public Guardian (OPG). The Court of Protection is the body that makes decisions and the OPG is the body which manages and regulates Attorneys and Court-Appointed Deputies. You can apply for a Lasting Power of Attorney (LPA) or a Court-appointed Deputy by going to: www.publicguardian.gov.uk

Deprivation of Liberty Safeguards (DoLS) - Recent Case Law -

Anyone who has been on DoLS training will have been told that it is legislation that is evolving as new case law is made. The new case law will be important to guide managers, in thinking about how to use DoLS or even whether the MCA is the appropriate legislation to use. This is certainly welcome for using and understanding DoLS, arguably the most complicated part of the Mental Capacity Act. Here are 3 recent legal cases (available from www.dh.gov.uk/en/Healthcare/Mentalhealth/DH_111770)

“W Primary Care Trust v B” 17th July 2009

This case was about the DoLS 'Eligibility Assessment'. It confirmed the DoLS Code of Practice by defining the care home, where the person resided, as not being a hospital, and therefore the person 'TB' was not defined as a 'mental health patient' and therefore still 'eligible' for DoLS. The deprivation was subsequently authorised.

“DCC v KH” 11th September 2009

The judgement declared that it would be lawful to transport someone back to a place, where they were already subject to a DoL (or even if the authorisation was not yet in place) if this was deemed in their best interests ie. no additional legal authority would be required. One exception to this would be if the journey was 'exceptionally long' (see DoLS CoP 2.15)

“GJ v The Foundation Trust” 20th November 2009

This complicated judgement was again about the 'Eligibility Assessment'. It said that professionals couldn't pick and choose arbitrarily between the MCA (2005) and the MHA (1983) meaning that the MHA had priority even if this would have a more negative impact on patient-clinician rapport. The DoLS Mental Health assessor must use their own subjective judgement as to whether the person met the criteria of s2/3 of the MHA. In addition: If deprivation in hospital was *primarily* for mental health treatment (not for a physical health treatment) AND the person was opposing this treatment / deprivation then the MHA should be used. In this case, GJ opposed the deprivation but was primarily to be deprived for a physical health treatment (diabetes), and therefore MCA DoLS was the correct legislation to use.

Previous newsletters are available from www.nwas.org.uk/imca.html