



# **Best Interests Assessors' Competencies Framework**

**North East Lincolnshire Council and  
NHS Humber and North Yorkshire Integrated Care Board (North East  
Lincolnshire Place)  
framework for appointment and validation of Best Interests Assessors**

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# 1 INTRODUCTION

## 1.1 The Best Interests Assessor's Statutory Role

The Mental Capacity Act 2005 (the MCA), as amended in 2007, provides for the deprivation of liberty of people lacking capacity to consent to the arrangements made for their care or treatment, who are receiving such care or treatment in care homes or hospitals (referred to as 'standard' or statutory settings). The 2007 amendment introduced the Deprivation of Liberty Safeguards (DoLS) and the associated role of Best Interests Assessor (BIA). The role of the BIA, as contained in the DoLS Code of Practice, is to decide whether a deprivation of liberty is occurring, or is likely to occur, and if so, whether the deprivation is a) in the best interests of the person assessed ('P') and b) necessary and proportionate in the circumstances.

Not all deprivation of liberty takes place in standard/ statutory settings. Where such takes place in community settings such as supported living or an individual's own home, they are authorised via the Court of Protection (CoP). Unlike DoLS authorisations, the BIA contribution to CoP authorisations is not set out in statute. Albeit not in a statutory capacity, BIAs often offer valuable support via undertaking assessments and/ or overseeing applications.

BIAs act as individual professionals and are personally accountable for their decisions. Those appointing them must not dictate or seek to influence their decisions<sup>i</sup>. However, BIAs can be subject to challenge where their practice may fall outside of recognised national and local best practice.

## 1.2 Responsibility for BIA Appointments – Local Arrangements

The Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008/1858 ('the Regulations') set out the eligibility criteria for BIAs. BIAs are appointed by local authorities, acting as a 'supervisory body'. Whilst North East Lincolnshire Council (NELC) retains statutory responsibility for appointing BIAs, local arrangements for appointing and validating BIAs are managed jointly by NELC and NHS Humber and North Yorkshire Integrated Care Board at North East Lincolnshire Place (ICB), via an agreement under s75 of the National Health Service Act 2006. The DoLS Team at Focus Independent Adult Social Work ('Focus') is commissioned to administer the process for appointing and validating BIAs, in conjunction with the discharge of other MCA functions.

The ICB commissions a number of providers to deliver health and social care functions on its own behalf, and on behalf of NELC. Best Interests Assessors (BIAs) are largely, although not exclusively, appointed from provider organisations commissioned by the ICB and/ or NELC, along with some staff from NELC and the ICB. On occasion, independent BIAs are utilised.

## 1.3 The Competencies Framework

Supervisory bodies should ensure sufficient BIAs are available to meet need, and must satisfy themselves that each BIA has the skill, experience, qualifications and training required by regulation to perform effectively. Arrangements should be in place to enable BIAs to maintain skills and knowledge, and to share, audit and review their practice<sup>ii</sup>.

This document sets out the framework intended to secure and deliver best MCA practice commensurate with the BIA role. It applies to all BIAs when:

- Undertaking BIA assessments, including as part of a Part 8 review<sup>iii</sup>
- Contributing to the Pre-Authorisation Review (Deprivation of Liberty) Panel ('the Panel') in respect of applications via the DoLS or equivalent processes via CoP
- Exercising any other function arising as a result of their BIA role.

All references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same

and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching to them.

## **2 APPOINTMENT OF BIAs – LEGAL REQUIREMENTS**

BIAs must be qualified Approved Mental Health Practitioners (AMHPs), social workers, nurses, occupational therapists or chartered psychologists<sup>iv</sup>. The supervisory body must also be satisfied that the BIA:

- a) has adequate and appropriate indemnity arrangements which provide cover for any liabilities that might arise in connection with carrying out best interests assessments<sup>v</sup>
- b) has an appropriate criminal record certificate issued under the Police Act 1997<sup>vi</sup>
- c) is not suspended from the register or list relevant to the BIA's profession
- d) has at least two years' post-registration experience
- e) has successfully completed training to be a BIA that has been approved by the Secretary of State
- f) except in the first 12 months from the date of completing their training, has, in the 12 months prior to revalidation, completed further training relevant to their role as a BIA<sup>vii</sup>
- g) has an applied knowledge of the MCA and related Codes of Practice, the ability to keep appropriate records and to provide clear and reasoned reports in accordance with legal requirements and good practice<sup>viii</sup>
- h) has the skills necessary to obtain, evaluate and analyse complex evidence and differing views and to weigh them appropriately in decision-making.<sup>ix</sup>

BIAs are also required to ensure appropriate processing of data in a secure and confidential manner, in accordance with current data protection legislation and Caldicott principles.

## **3 EXPECTATIONS OF BIAs DURING APPOINTMENT**

It is accepted that the majority of BIAs utilised in North East Lincolnshire are not directly employed as BIAs, and deliver BIA functions alongside their substantive role. This imposes inevitable capacity constraints, which have been taken into account when setting out the expectations in this document.

The following paragraphs are not intended to be exhaustive, but give an indication of the minimum expectation of BIAs.

### **3.1 Professional expectations**

BIAs will:

- safeguard the principles and values of the NHS Constitution (whether or not they work for the NHS), including in particular placing P at the heart of BIA functions, acting with openness and honesty, and supporting the involvement of all involved in the process
- act as champions of the MCA, the European Convention on Human Rights (ECHR) and other human rights obligations which the DoLS and associated CoP processes are intended to give effect to
- maintain up to date knowledge of the MCA and related case law, and understand how to apply such knowledge to practice
- act as an example of best professional practice for less qualified colleagues, and offer expert MCA advice to colleagues within and outside of the BIA's area of practice
- assist in the dissemination of learning, and in particular from examples of good practice, across all service areas
- deliver their functions in accordance with the MCA (with particular regard to Schedule A1), its related codes of practice, and national and local guidance, including guidance from the CoP

- act with autonomy and in accordance with public law principles when making professional judgements, and be prepared to defend those judgements against legal challenge if necessary
- raise safeguarding concerns with the Safeguarding Team responsible for the area in which P resides, and support delivery of multi-agency safeguarding procedures. In North East Lincolnshire, the Safeguarding Team can be contacted via 01472 256256. BIAs assessing Ps outside of North East Lincolnshire will alert the relevant area Safeguarding Team and notify the North East Lincolnshire Safeguarding Team of the action taken.

### 3.2 Operational expectations

BIAs will:

- produce and maintain timely and comprehensive records in relation to all functions, utilising SystemOne (independent BIAs without access to SystemOne are not expected to use it)
- respond to all requests to undertake assessments (including mental capacity, age, no refusals and best interests assessments) on a rota basis. Mental health and eligibility assessments are conducted by Mental Health Assessors (MHAs)
- notify the DoLS Team of any conflict of interests which would prevent them from undertaking an allocated assessment (e.g. the BIA is involved in the care or treatment of the P they have been asked to assess; for other examples of possible conflict see the DoLS Code paragraph 4.13)
- provide an independent and objective view of whether there is genuine justification for deprivation of liberty, taking account of all relevant views and circumstances<sup>x</sup>
- advise the DoLS Team of the need to appoint an Independent Mental Capacity Advocate (IMCA) where appropriate, if the BIA believes that such appointment should have been/ should be made (see the DoLS Code at paragraphs 3.22 to 3.28)
- be alert to the need to identify and act on indications that P or their Relevant Person's Representative (RPR) wishes to appeal via s21A, in accordance with local guidance
- when conducting assessments:
  - explain to P the purpose of the assessment
  - involve P in the process as much as is possible and practical, and help them to participate in decision-making<sup>xi</sup>
  - consult the managing authority of the hospital or care home<sup>xii</sup>
  - have regard to the conclusions of the MHA and to any relevant needs assessment and care plan (as defined by MCA Schedule A1, paragraph 39(4) and (5))
  - take into account any information given or submissions made by P's RPR and any s39A, C or D IMCA<sup>xiii</sup>
  - support RPRs in understanding the rights and responsibilities attached to their role. BIAs should take particular care to support unpaid RPRs who may find the prospect of acting as RPR daunting
  - consult all interested persons (as defined by MCA Schedule A1, paragraph 185) and those listed at paragraph 4.65 of the DoLS Code of Practice as far as practicable and possible, and take their views into account as far as is practical and appropriate<sup>xiv</sup>
  - support interested persons to express their views, explaining to them key aspects of P's care plan and what it aims to do, and the procedures connected with authorising a deprivation<sup>xv</sup>

- utilise locally agreed national publications to support all parties to the process in understanding its implications, including providing them with, or directing them towards, such written information (see locally collated information at: <https://livewell.nelincs.gov.uk/>)
- provide completed assessments which:
  - are clearly recorded in writing using ADASS forms (amended for local use where relevant), or CoP forms where applicable
  - are written in plain English and reflect the requirements of the Local Government Association/ Association of Directors of Adult Social Services Deprivation of Liberty Safeguards Best Practice Guidance for Form 3, which can be found at [toolkit-seeks-assist-thos-3a6.pdf \(local.gov.uk\)](https://www.local.gov.uk/toolkit-seeks-assist-thos-3a6)
  - are provided via SystmOne:
    - for a standard authorisation, within 21 days
    - where P is already subject to an urgent authorisation, within the period during which the urgent authorisation is in force
    - where an unauthorised deprivation is suspected, within 7 days of the request for an assessment being made to the DoLS Team (independent BIAs without access to SystmOne are not expected to use it), unless a later deadline has been agreed with the DoLS Team<sup>xvi</sup>
  - state the name and address of every interested person consulted in carrying out the assessment<sup>xvii</sup>
  - provide sound evidence and analysis on how conclusions were reached, with particular reference to the matters listed at paragraph 4.61 of the DoLS Code of Practice and clear consideration of the necessity and proportionality of any interference with rights under the ECHR
  - are unambiguous regarding whether there is a deprivation of liberty and whether this should be authorised
  - When recommending authorisation duration, carefully consider whether a period of less than 12 months is justified, by reference to local guidance (see DoL Operational Handbook)
  - when recommending authorisation, state the maximum authorisation period (with reasons) and recommend conditions if appropriate;<sup>xviii</sup>
  - where conditions are included, make clear whether their rejection or variation by the supervisory body would significantly affect the other conclusions reached<sup>xix</sup>. Note: conditions should not be used to manage care planning issues, which can more appropriately be addressed via use of recommendations
  - recommend a commencement date. The commencement date should take into account that
    - standard authorisations come into force when they are given (i.e. completed by signatories) or at any later time specified (where an application has been made in advance)<sup>xx</sup>
    - further authorisations should be requested to begin immediately after expiry of the existing authorisation (ensuring there are no periods of unauthorised deprivation)<sup>xxi</sup>
  - when unable to recommend authorisation, include recommendations regarding alternative approaches to care and treatment, where appropriate, and how deprivations of liberty can be avoided
- select or confirm an RPR as required by MCA Schedule A1 paragraph 143, and in accordance with Schedule A1 paragraph 140, regulation 3 of the Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) Regulations 2008, and relevant case law<sup>xxii</sup>. BIAs should ensure in particular that the RPR is able and willing to promptly challenge the lawfulness of P's detention before the court, in appropriate circumstances

- use best endeavours to secure feedback from P, and the RPR in the required form (see the DoL Operational Handbook for forms and guidance)
- Attend and contribute to the Panel (see section 4 below). This is not required of independent BIAs
- Where Panel BIAs identify issues for further attention and/ or recommend amendments to an application, these must be completed promptly by the BIA to whom they are addressed. Alternatively, the BIA must provide clear justification as to why they do not believe those changes should be made. Where irresolvable disputes arise these will be escalated to the Head of Service (Safeguarding) and thereafter to the MCA Strategic Lead if necessary.

### 3.2.1 Pending change to P's circumstances in the period following assessment

Where the assessing BIA considers that a material change in the P's circumstances is reasonably foreseeable within a reasonable period of time (or actually known to the BIA to be imminent) at the time of the assessment, the BIA should not conclude their assessment without further investigation. Further investigation includes consideration of the following:

1. Has the foreseen or known change occurred within a reasonable period?
2. If so, does the change impact on the deprivation of liberty i.e. does it change the BIA's view of whether P meets the qualifying requirements? Or, does it change the BIA's view regarding the conditions/ recommendations made, or now wishes to make?

Following investigation, and assuming the BIA considers P still meets qualifying requirements, the BIA may decide to proceed as initially intended (i.e. not to amend the assessment), recommend a shorter authorisation if appropriate, and/ or to amend/ add conditions or recommendations.

If any amendments are made to the assessment after the BIA has assigned it to the Panel the BIA must notify the DoLS Team to ensure the Panel and others are reading the up to date assessment.

### 3.2.2 Provision of Information by Independent BIAs

In order to meet requirements under the current data protection legislation and Caldicott principles, independent BIAs are required to enter into an agreement in the terms found at Appendix One.

## **4 NORTH EAST LINCOLNSHIRE PRE-AUTHORISATION REVIEW PANEL**

### **4.1 the Panel's function**

The Pre-Authorisation Review Panel (the Panel) is a peer forum, acting on behalf of NELC as supervisory body. All BIAs (excepting independent BIAs) attend as members of the Panel on a rota basis, and participate in the peer review and approval of applications for authorisation and review of deprivations of liberty, and BIA contributions to applications to the CoP. The Panel is intended to offer supportive oversight of BIA practice, to ensure application of the highest standards which champion the principles of the MCA and fundamental principles of human rights.

The Panel's terms of reference can be found at Appendix Two.

For the purposes of this framework, the Panel serves three key purposes:

- a) Scrutiny: peer review of applications to authorise/ review deprivations of liberty (including those in community settings), and BIA contributions to CoP applications, before submission to NELC signatories for authorisation
- b) Assurance: reviewing/ checking and challenging applications and identifying areas for further attention (where appropriate), to offer additional assurance to signatories that all relevant matters have been taken into account in respect of each application
- c) Quality: monitor BIA practice to ensure that good practice is promoted and poor practice is proactively addressed. This may include providing feedback to contribute to the assessment and validation of BIAs.

Unqualified BIAs or other relevant staff members may be invited to, or may request attendance at, the Panel to support them in gaining appropriate experience.

#### **4.1 the Panel's contribution to BIA oversight**

At each Panel, Panel BIAs use a checklist (via SystemOne) to RAG rate each BIA assessment reviewed, as follows:

- Red (major): the assessment cannot be approved by Panel
- Amber (moderate): the assessment is approved but needs "more than basic" alterations
- Green (minor): the assessment can be approved, with minor or no alterations.

In addition to identifying assessments requiring further attention, the RAG rating allows for review of BIA performance. The number of assessments completed by each BIA is recorded, with RAG rating, providing easy identification of the number of assessments completed at each level (red, amber or green). See Appendix Two B for further detail on the identification of assessments as red, amber or green.

The DoLS Team will highlight identified difficulties to the Head of Service (Safeguarding), to facilitate prompt identification of poor practice and initiate remedial action (see section 4.3 below).

### **5 LOCAL APPROACH TO ASSESSMENT OF BIA COMPETENCIES**

North East Lincolnshire's approach is intended to comply with the requirements of the MCA. It also reflects the National Mental Capacity Forum's MCA Competency Framework and the College of Social Work's BIA capability requirements.

The assessment of competencies should combine a mix of direct observation of practice, as well as a process of exploration, discussion and questioning in supervision etc to develop analytical and evaluative thinking, which in turn develops professional judgement. Observation of practice may take any of the following forms:

- Direct observation of practice when engaging with Ps, by other staff members, for example, care staff, the BIA's supervisor / line management (such as via professional revalidation), or a newly qualified BIA seeking shadowing experience
- Direct observations from Ps and/ or their representatives
- Observations arising from peer supervision/ discussions at the BIA Forum and/ or Panel
- Concerns about practice observations recorded on the portal.

Assessment should also include a knowledge and understanding of the multi-agency policy and procedures for safeguarding adults in the area in which P resides<sup>xxiii</sup>.

## 5.1 Initial Appointment

On demonstrating compliance with all matters listed at section 2 above (Legal Requirements), BIAs receive a certificate of appointment signed by NELC signatories. Certification allows each BIA to practice. Continued eligibility to practice is subject to meeting annual requirements.

BIAs are required to submit documentary evidence to the DoLS Team once per annum to confirm that they meet the requirements of section 2, and to supply updated documents within that year, where necessary (for example, indemnity insurance expiring within year will necessitate submission of replacement copy documents).

In addition to proof of qualification, prior to appointment independent BIAs must provide the DoLS team with:

- at least two references which are not more than 12 months old regarding their suitability to perform the BIA role
- an updated anonymised portfolio (examples) of work evidencing the standard of their assessments and related documentation OR a recommendation from another local authority for whom that BIA has already completed work
- an enhanced criminal record certificate from the Disclosure and Baring Service (DBS)
- confirmation of appropriate indemnity insurance
- confirmation of the ability to receive encrypted secure emails.

## 5.2 Requirements following Appointment

Requirements post-appointment are dependent on whether the BIA is classed as a practicing BIA, leadership BIA or independent BIA.

To retain their certificate of appointment, practicing and leadership BIAs must continue to meet and evidence the following requirements:

### 5.2.1 Practicing BIAs

- Complete a minimum of four best interests assessments per annum, submitted via SystemOne
- Complete a minimum of 18 hours training per annum relevant to their role as a BIA, recorded and submitted in the required format (see Training and Learning Log at Appendix Three)
- Support less experienced BIAs by offering shadowing opportunities and/ or buddying (new BIAs are placed on the rota to work alongside an experienced BIA)
- Support BIAs required to undertake remedial actions by offering mentoring, where requested.

### 5.2.2 Leadership BIAs

- Offer representation at relevant local, regional and national forums
- Offer oversight of BIA practice, offer advice to BIAs, and support the development of improvements to BIA practice
- Complete a minimum of two best interests assessments (which may be lighter touch assessments), per annum, submitted via SystemOne

- Complete a minimum of 12 hours training per annum relevant to their role as a BIA, recorded and submitted in the required format (see Training and Learning Log at Appendix Three).

### 5.2.3 All Practicing and Leadership BIAs

- Contribute to the Panel on a rota basis
- Attend a minimum of four out of six BIA Forums (six Forums are scheduled each year) per annum
- Demonstrate their contribution to development of the BIA Forum agenda and delivery of agenda items (see Training and Learning Log at Appendix Three)
- Attend a minimum of one Yorkshire and Humber MCA DoLS Conference per annum (or an agreed alternative)
- Attendance at any other relevant conferences as and when required.

Where relevant, discretion will be exercised to ensure that the contributions of leadership BIAs are recognised when considering reaccreditation.

### 5.2.4 Independent BIAs

Independent BIAs are expected to meet the following requirements:

- Completion of a minimum of four best interests assessments per annum (such assessments need not have been commissioned on behalf of NELC/ the ICB)
- Completion of a minimum of 18 hours training per annum relevant to their role as a BIA recorded and submitted in the required format (see Training and Learning Log at Appendix Three) or agreed alternative
- Access to, and attendance at, regular professional supervision appropriate to the BIA role
- Provision of at least two updated references which are not more than 12 months old regarding their continuing suitability to perform the BIA role

Independent BIAs may not sub-contract provision of their services to an alternative BIA.

## 5.3 Repeat poor practice

Where a BIA's assessments are repeatedly RAG rated as red, the Head of Service (Safeguarding) and Mental Capacity Act Strategic Lead (acting as 'revalidators') will decide between them who will lead on the approach to the particular BIA about whom there are concerns. Actions may include:

- Raising concerns directly with the BIA and with the BIA's supervisor (where available – contacting a supervisor may be less easy where the BIA is an independent)
- Agreeing directly with the BIA appropriate remedial action, with timescales
- Pairing the BIA with another experienced BIA acting as a mentor, to support them through the process of undertaking the remedial action
- Advising the DoLS Team of an appropriate period of suspension from the rota, where required to enable the BIA to undertake the remedial action
- Advising the DoLS Team whether, at the end of the period of suspension, the remedial action has, or has not, been satisfactorily undertaken. Where it has not been satisfactorily undertaken:
  - The responsible revalidator will confirm with the BIA in writing (copying in the BIA's supervisor, where available) that the BIA's appointment will be revoked and they will be removed from the rota. The BIA will be advised that, should

any other local authority seek confirmation of their approval to act as a BIA in respect of those for whom NELC/ the ICB is responsible, the BIA's removal of validation will be disclosed

- In appropriate circumstances, references may need to be made to the BIA's employer and relevant professional body
- The DoLS Team will make arrangements for revoking the BIA's certificate of appointment and removing them from the rota
- The DoLS Team will confirm the revised position with NELC signatories.

See 5.5 below re identification of borderline performance at revalidation.

## **5.4 Revalidation**

Revalidation is subject to annual review, which is intended to confirm that BIAs are maintaining their skills, knowledge and practice.

To assess whether BIAs continue to meet the requirements at sections 1, 2 and 5.2 above (as appropriate to their BIA classification), annual review comprises:

- a) Submission of appropriate documentation to evidence that the requirements of section 2 are met
- b) Consideration of observed practice, as described at section 5
- c) Calculation of the number of assessments completed, and Panels contributed to
- d) Calculation of the number of assessments RAG rated as green, amber or red. At least 75% of the assessments undertaken must be rated as green or amber
- e) Calculation of the number of BIA Forums and MCA DoLS conferences attended (or an agreed alternative)
- f) Evaluation of contributions made to the BIA Forum agenda (see Training and Learning Log at Appendix Three)
- g) Submission of a training record in the required format (see Training and Learning Log at Appendix Three), which includes or attaches evidence of reflective learning. Reflective learning may also be evidenced via contributions to reporting (see g above) and by attaching relevant reflections collated to meet existing professional requirements (e.g. nursing or social work revalidations)
- h) Confirmation that there are no issues with fitness to practice/ professional registration.

Independent BIAs must meet requirements a) – d) (excluding Panel attendance) and g) to h) listed above.

Each BIA will require consideration for revalidation at different times of the year, depending on the date on which they were initially appointed. The DoLS Team maintains a register of which BIAs require revalidation at what time. BIAs will supply their evidence to the DoLS Team at the beginning of the month preceding the month in which they require revalidation, or at any other time on reasonable request. The DoLS Team will check the evidence supplied, and confirm with the BIA whether they may be revalidated, in readiness for the coming month. If the DoLS Team is not satisfied that appropriate evidence has been supplied, they will escalate this to the Head of Service (Safeguarding).

## **5.5 Identification of borderline BIA performance at Revalidation**

Where the revalidation process identifies that a BIA's competence is borderline, the revalidators will require evidence of development and learning to address any issues identified. A timeframe will be agreed within which the BIA must submit evidence of their

further learning and development. During the timeframe agreed for submission, the BIA will be suspended from the BIA rota. If the required evidence is not submitted within the agreed timeframe, the BIA may be deemed unable to demonstrate the required competencies.

Where BIAs are unable to demonstrate the required competencies, and in accordance with 5.3 above (repeat poor practice), the following actions will be undertaken:

- A revalidator will confirm with the BIA in writing (copying in their supervisor, where available) that the BIA's appointment will be revoked and they will be removed from the rota. The BIA will be advised that, should any other local authority seek confirmation of their approval to act as a BIA in respect of those for whom NELC/ the ICB is responsible, the BIA's removal of validation will be disclosed
- The DoLS Team will make arrangements for revoking the BIA's certificate of appointment and removing them from the rota
- In appropriate circumstances, references may need to be made to the BIA's professional body
- The DoLS Team will confirm the revised position with NELC signatories.

A checklist for use on appointment and at revalidation can be found at Appendix Five (practicing and leadership BIAs) and Appendix Four (independent BIAs).

## **6 TRAINING**

This framework will be drawn to the attention of all relevant individuals as part of the implementation process (see 7 below).

## **7 IMPACT ANALYSIS**

### **7.1 Equality**

This framework has been created with due regard for NELC/ the ICB's public sector equality duty under the Equality Act 2010, s149. All BIAs, in the exercise of their public functions, must also have due regard to the matters within s149(1).

An Equality Impact Assessment (EIA) has been conducted with regard to this framework. In seeking to ensure that BIAs are appropriately skilled to discharge statutory duties and act as champions of the MCA and the ECHR, the framework is largely neutral with regard to Protected Characteristics. Two areas of concern have been identified: whilst the framework itself is unlikely to have an impact on grounds of race, it is recognised that some nationalities may have difficulties understanding the framework due to limited English Language skills. Those with sensory impairments or communication needs may have similar difficulties. Mitigating actions are set out within the EIA.

### **7.2 Bribery Act 2010**

The Bribery Act 2010 is relevant to this framework. Under that Act it is a criminal offence:

- To bribe another person by offering, promising or giving a financial or other advantage to induce them to perform improperly a relevant function or activity, or as a reward for already having done so; and
- To be bribed by another person by requesting, agreeing to receive or accepting a financial or other advantage with the intention that a relevant function or activity would then be performed improperly, or as a reward for having already done so
- To bribe a foreign public official - A person will be guilty of this offence if they promise, offer or give a financial or other advantage to a foreign public official, either directly or through a third party, where such an advantage is not legitimately due

- For commercial organisations to fail to embed preventative bribery measures. This applies to all commercial organisations which have business in the UK. Unlike corporate manslaughter this does not only apply to the organisation itself; individuals and employees may also be guilty.

These offences can be committed directly or by and through a third person and other related policies and documentation when considering whether to offer or accept gifts and hospitality and/ or other incentives.

Anyone with concerns or reasonably held suspicions about potentially fraudulent activity or practice should refer to the Local Anti-Fraud and Corruption Policy and contact the Local Counter Fraud Specialist.

## **8 IMPLEMENTATION**

This framework will be disseminated via the BIA Forum, MCA Group and via key individuals within provider organisations employing BIAs. The framework will be lodged on LiveWell (<https://livewell.nelincs.gov.uk/>), and providers employing BIAs are expected to ensure that it is available to those BIAs electronically. The DoLS Team will ensure independent BIAs are directed towards it. Each provider will support the BIAs they employ in delivering on the framework.

Breaches of this framework may be investigated and may result in the matter being treated as a disciplinary offence under the ICB's disciplinary procedure, or that of the provider which employs the BIA in breach.

## **9 MONITORING AND REVIEW**

This framework will be reviewed in three years. Earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in law/ guidance, as instructed by the senior manager responsible for this document.

## **10 REFERENCES AND LINKS TO OTHER DOCUMENTS**

European Convention on Human Rights  
 Convention on the Rights of Persons with Disabilities  
 NHS Constitution  
 Human Rights Act 1998  
 The current data protection legislation  
 Mental Capacity Act 2005  
 National Health Service Act 2006  
 Mental Capacity Act Code of Practice 2007  
 Deprivation of Liberty Safeguards Code of Practice 2008  
 Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008  
 Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) Regulations 2008  
 Bribery Act 2010  
 Equality Act 2010  
 General Data Protection Regulation (EU) 2016/679.



Compliance with the Mental Capacity Act 2005 (MCA) including any requirement to assess, review and/ or report on a potential or actual deprivation of liberty of a resident within a standard or non-standard setting, in fulfilment of obligations arising from the Deprivations of Liberty Safeguards (DoLS) or Court of Protection (CoP).

Independent BIAs will be asked to undertake a process on behalf of the data controller, which may include an assessment, review and/ or report on a potential or actual deprivation of liberty of a resident within a standard or non-standard setting. Each process is deemed to be a self-contained transaction with regard to a resident, with a clear conclusion (by way of example only, a conclusion may be indicated by the submission to the data controller of a 'Form 3' with regard to assessment of deprivation in a standard setting); in this Agreement, a process combining any or all of these elements – assessment, review, and/ or report – in writing or otherwise, is referred to as a 'Transaction'. This Agreement may relate to a series of such Transactions, or to a single Transaction.

#### 4. Information to be processed

- Personal information
- Personal data/ sensitive personal data

This information will be collectively referred to as 'Personal Data' in this Agreement

#### 5. Methods Used for Sharing and Storage

Independent BIAs work within their own environment.

This must consist of:

- Data repositories – where Personal Data is held securely
- Processes – approved documented processes for secure transfer, data management (including data linkage), access controls, and authorisation processes relating to Personal Data

Specifically, the data processor:

- Will transfer Personal Data in a secure manner where secure transfer includes the transfer of information from NHS to NHS directly via download from SUS or through secure email (from @nhs.net to @nhs.net account) or NHS Secure File Transfer Service. Use of the NHS Secure File Transfer Service (for Independent BIAs not sending from and to an @nhs.net account) requires the data processor to register with it; guidance is available at:  
[NHSmail sharing sensitive information guide](#)  
[NHSmail encryption guidance for senders](#)  
[NHSmail encryption guidance for recipients](#)
- Will not keep Personal Data on any laptop or other removable drive or device ('Devices') unless that Device is protected by being fully encrypted, and the use of the Device is necessary for the provision of the services under this Agreement. Where this is necessary, the data processor will keep an audit trail of which Devices the Personal Data is held on.

#### 6. Information safety and retention issues:

1. The Independent BIA must:

- Never leave Devices unattended
  - Never leave Devices on view in a motor vehicle. Where there is no choice but to leave Devices in a vehicle ensure they are locked in the boot and not visible
  - Where carrying a Device, wherever possible, use rucksacks or other non-obvious bags to carry it in
  - Ensure that Devices are not labelled with any sort of NHS identification
  - If possible, always carry paperwork separate from any Device.
2. When using Devices in a non-secure environment, the Independent BIA must:
    - Ensure that they are not overlooked
    - When in a public place, find a location where it is not possible for anyone to see over their shoulder
    - Ensure that CCTV does not overlook the Device so that Personal Data can be seen
    - If using a publicly available network or 'hotspot', make sure that is a secured network (i.e. requires a password). If it is unsecured, the Independent BIA will not use it, because any data passing between the Independent BIA's Device and the network can be captured.
  3. The Independent BIA will:
    - Never store Personal Data on a Device which does not belong to them and which is shared with others. This applies to home personal computers or (by way of example only) personal computers used in hotels or Internet cafés
    - Not store Personal Data on diskette, CD or other similar storage device
    - Use only an encrypted memory stick where Personal Data does need to be stored, and not write the password down.
  4. Where, following confidential destruction of Personal Data in accordance with clause 7.15 below, the Independent BIA wishes to evidence the delivery of BIA services to support them in their continuing professional development and/ or professional revalidation, they may apply to the data controller in writing for appropriate evidence.

## **7. Data Processor Responsibilities**

- The Independent BIA warrants, represents and undertakes to focus that the Independent BIA:
1. Will perform his/ her obligations under this Agreement in such a way as to ensure that the data controller does not or is not likely to breach any of its obligations under the current Data Protection legislation and the General Data Protection Regulation (EU) 2016/679
  2. Will comply with the current Data Protection legislation, the General Data Protection Regulation (EU) 2016/679 and in particular will adhere to the data protection principles set out in Schedule 1 of the Act.
  3. Has no reason to believe that any legislation applicable to him/ her in any way prevents, restricts or limits his/ her ability or right to comply with and fulfill his/ her obligations under this Agreement.
  4. Will process the Personal Data only in accordance with written instructions from the data controller and for no other purposes.

5. Will process Personal Data only to the extent, and in such manner, as is necessary for the provision of the services he/ she has contracted to provide, the proper performance of his/ her obligations under this Agreement or as is required by law or any regulatory body.
6. Will not process the Personal Data outside of the European Economic Area without prior written consent from the data controller. Where consent is provided, the Independent BIA will ensure that an adequate level of protection is in place in respect of the Personal Data to ensure that all Parties to this Agreement meet their obligations under the eighth Data Protection Principle or under the principles within the General Data Protection Regulation (EU) 2016/679.
7. Will ensure that the Personal Data is only disclosed to and/or accessed or processed by persons who reasonably require it in order to allow the Independent BIA to comply with his/ her obligations under this Agreement and that such persons are informed of the confidential nature of the Personal Data and undertake to comply with the obligations of the Independent BIA set out in this Agreement.
8. Will ensure that their information governance training is up-to-date.
9. Will not disclose, trade, barter, sell, give away, lend or transfer any Personal Data to any person or make any copy or copies of the Personal Data in any form or on any media whatsoever save to the extent that is absolutely necessary for the carrying out of the BIA services or the proper performance of his/ her obligations in terms of this Agreement or for back-up or security purposes deemed necessary by the Independent BIA.
10. Will not disclose the Personal Data to a third party in any circumstances other than at the specific written request of the data controller unless the disclosure is required by law.
11. Will, in processing Personal Data on behalf of the data controller under the terms of this Agreement, implement and ensure that the Independent BIA has in place at all times during the term of this Agreement appropriate technical and organisational measures to protect all of the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. The measures shall be in accordance with the seventh Data Protection Principle or Article 5 under the General Data Protection Regulation. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful data processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the data which is to be protected.
12. Will, as soon as reasonably practicable, and in any event within five (5) working days of a request from the data controller, provide written details of the technical and organisational measures taken by the Independent BIA to demonstrate and ensure compliance with the current Data Protection Legislation and the General Data Protection Regulation (EU) 2016/679 no later than by 25 May 2018.
13. Agrees that if requested by the data controller, the Independent BIA's auditors (internal or external) or any regulatory body, will allow access on demand subject to reasonable notice to all of the Independent BIA's premises to verify that the Independent BIA has complied with his/ her obligations in terms of this Agreement.
14. Will, on satisfactory completion of a Transaction and on termination of this Agreement, cease using/ processing data provided in relation to this Agreement.
15. Will, on satisfactory completion of the Transaction and on termination of this Agreement, return all the Personal Data and all other information belonging to the data controller or disclosed to the Independent BIA for the purposes of this Agreement, and all copies of

Personal Data and other information, within two (2) working days within a standardised format specified by the data controller, or, at the data controllers written instruction, will confidentially destroy all Personal Data and all other information, including copies, and provide written confirmation to the data controller that it has done so, except to the extent that the Independent BIA is prevented by law from doing so, in which event, the Independent BIA undertakes that all such Personal Data and other information will be kept confidential, will not be disclosed to any third party or processed for any purpose.

16. Will forward to the data controller, any subject access requests made under section 7 of the current Data Protection legislation (DPA) or Article 12 of the General Data Protection Regulation (EU) 2016/679, or any requests made under the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR), to which the data controller is subject and, where requested, assist with the response in a timely manner (two (2) working days for requests under FOIA and EIR, and five (5) working days for subject access requests) that ensures the data controller is able to comply with their legal obligations under this legislation.
17. Will, following notification from the data controller that it has received a request from a third party, provide to the data controller within two (2) working days of such notification (for FOIA and EIR) and within ten (10) working days of notification (for requests in relation to the DPA or General Data Protection Regulation (EU) 2016/679), such information as may be requested by the data controller and, in addition, such additional information that it holds on behalf of the data controller under this Agreement and that the Independent BIA believes is relevant for the purposes of responding to the request.

## **8. Rights**

All rights to the Personal Data and any information arising out of the processing are reserved by the data controller.

## **9. Indemnities**

Each Party to this Agreement shall indemnify the other against all costs, expense, including legal expenses, damages, loss, including loss of business or loss of profits, liabilities, demands, claims, actions or proceedings which a Party may incur arising out of any breach of this Agreement howsoever arising for which the other Party may be liable.

## **10. Incident Reporting**

### **Details of procedures**

Where inappropriate access to any of the Personal Data is suspected the Party first alerted to this must report the incident in line with their own information risk incident reporting procedures.

The Data Protection Officer/Information Governance Manager and Caldicott Guardian of each Party to which this Agreement relates must be informed and a joint investigation carried out if necessary.

Should the data controller's members of staff be found to have deliberately and inappropriately accessed Personal Data, the data controller will take the appropriate disciplinary action and

complete an investigation report to be shared with both Parties to this Agreement. Should the Independent BIA be found to have deliberately and inappropriately accessed Personal Data, the data controller will take whatever action it deems appropriate including carrying out an investigation and creating a report; the BIA is expected to cooperate with any such action.

## 11. Miscellaneous

Any communication from the Independent BIA in relation to the Freedom of Information Act 2000, the Environmental Information Regulations and the current Data Protection legislation or the General Data Protection Regulation (EU) 2016/679, shall be deemed to have been received and served:

- If hand delivered, at the time of delivery
- If sent by fax, at completion of transmission during the hours of 9am to 5pm on a working day at its destination or if not within such hours at 9am at its destination on the next working day
- If sent by post, within 48 hours of posting (exclusive of Sunday)

No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties.

This Agreement shall be governed by and construed in accordance with the laws of England.

The Parties below agree to abide by the terms of this Agreement, which will enable the provision of the BIA services.

**SIGNED** for and on behalf of focus by:

Signature:

Name:

Position:

Date:

**SIGNED** for and on behalf of the Independent BIA by:

Signature:

Name:

Position:

Date:

**Copies of this Agreement should be retained by the named persons above and be made available for inspection on request.**

## Appendix Two: Mental Capacity Act 2005 Pre-Authorisation Review (Deprivation of Liberty) Panel, Terms of Reference – revised January, 2023

### Introduction: local arrangements

The Mental Capacity Act 2005 (MCA) provides for the deprivation of liberty (DoL) of people lacking capacity to consent to the arrangements made for their care or treatment, who are receiving such care or treatment in care homes or hospitals. The MCA introduced the Deprivation of Liberty Safeguards (DoLS) and associated role of Best Interests Assessor (BIA). The role of the BIA is to decide whether a DoL is occurring, or is likely to occur, and if so, whether the deprivation is a) in the best interests of the person assessed ('P') and b) necessary and proportionate in the circumstances.

Via agreement under s75 of the National Health Service Act 2006, North East Lincolnshire Council (NELC) delegated some adult social care responsibilities to the NHS Humber and North Yorkshire Integrated Care Board at North East Lincolnshire Place (ICB). NELC also has a direct contractual relationship for delivery of some of its responsibilities with Focus Independent Adult Social Work ('Focus'). As an integrated commissioner, the ICB commissions a number of providers to deliver health and social care functions on its own behalf, and on behalf of NELC. Best Interests Assessors (BIAs) are largely, although not exclusively, appointed from provider organisations commissioned by the ICB and/or NELC, along with staff from NELC and the ICB. All such BIAs contribute to the Pre-authorisation Review (Deprivation of Liberty) Panel, referred to as 'the Panel'.

NELC retains statutory responsibility for functions under the MCA which it has delegated to the ICB or contracts for with Focus (most notably in the context of these Terms of Reference, supporting delivery of supervisory body functions under the DoLS). Arrangements for maintenance of these functions are managed in partnership by NELC and the ICB, largely acting via the DoLS Team at Focus. The Panel is ultimately accountable to NELC directly, and/ or the ICB (as NELC's agent or otherwise).

### Aims of the Panel

- Act in accordance with the MCA (with particular regard to Schedule A1), its related codes of practice, and national and local guidance. This includes guidance from the Court of Protection (CoP)
- Act with autonomy and in accordance with public law principles when making professional judgements, and offering guidance on the discharge of MCA functions
- Assist in the discharge of MCA functions, and in particular
  - Authorisation of, or application for authorisation of, DoL
  - Review of DoL
  - Administrative management of authorisations, including review of conditions attached to authorisation, referral to the advocacy service, appointment of Relevant Persons Representatives (RPR), or recommendation for termination of authorisation
  - The appointment and validation of BIAs
- Remain up to date with relevant legal developments and promptly apply such knowledge to the business of the Panel
- Act in accordance with the North East Lincolnshire MCA and Deprivation of Liberty Policy, BIA Competencies Framework, and safeguarding policies and procedures
- Comply with the requirements of the local coroner
- Provide BIA peer challenge and support, acting as champions of the MCA's ethos and high standards of practice.

### Underpinning Legislation and Principles

- European Convention on Human Rights
- United Nations Convention on Rights of Persons with Disabilities
- Mental Health Act 1983 and Code of Practice
- Current data protection legislation
- Human Rights Act 1998

- Mental Capacity Act 2005, MCA Code of Practice and DoLS Code of Practice
- Equality Act 2010
- NHS Constitution
- Office of the Public Guardian and CoP practice directions
- Guidance issued by the Association of Directors of Adult Social Services (ADASS) or Local Government Association (LGA).

#### **Function of the Panel**

- Deliver legally compliant processes
- Support NELC signatories in statutory decision making
- Scrutinise:
  - DoLS authorisation and review applications
  - applications to the CoP
- In scrutinising applications, satisfy itself of the following in particular:
  - That there is adequate information provided about P to enable the Panel to get a sense of who P is and what their wishes are/ might be in this context
  - That a DoL is taking place, by reference to the acid test/ relevant parts of Sch 1A and A1
  - If the DoL is confirmed, less restrictive options have been considered (i.e. can the DoL be reduced to a restriction by amendments to the care plan/ treatment regime?)
  - Where no less restrictive option is possible, the DoL is necessary, proportionate and in P's best interests
  - That conditions and/ or recommendations have been appropriately utilised, and linked to the duration of the authorisation where relevant
  - That the duration of the authorisation, if less than 12 months, is justified
  - That the involvement of an IMCA has been appropriately considered
  - That in the context of CoP applications, any tenancy has been lawfully secured, or an application to secure it is submitted with the application to authorise the DoL (to ensure that securing P's tenancy is not overlooked as part of applications to authorise DoL)
- Help identify possible objection to arrangements amounting to DoL, and flag for action
- Collate and check any required amendments and contact the BIA (or other assessor in CoP processes) to ensure these are made
- Record all recommendations, decisions and actions in an auditable format on SystemOne, utilising the standard forms provided by ADASS and amended for local practice
- Provide a strong quality assurance process for applications (including RAG rating of assessment), and support consistency across applications
- Provide feedback to the BIA and information to support the BIA re-accreditation process
- Escalate any issues, concerns or trends in practice
- Assist in gathering data to contribute to reporting locally and nationally
- Raise safeguarding concerns with the Safeguarding Team responsible for the area in which P resides, and support delivery of multi-agency safeguarding procedures.

#### **Panel Conduct**

Pre-existing professional knowledge of P

When BIAs attend Panel, if the BIA considers that their pre-existing knowledge of P has an impact on their ability to act as a Panel member, they will contact the DoLS Team. The Team will provide the BIA with alternative assessments for consideration.

Disputes regarding submission of applications to signatory for authorisation

Where, with regard to whether or not to approve applications for signatory authorisation, there is a dispute between Panel BIA(s) and the assessing BIA, the following will result –

- a) The Panel BIA(s) will try to resolve their concerns directly with the assessing BIA either face to face or via a direct discussion over the telephone/ virtually

- b) If the Panel BIA(s) are unable to resolve the matter directly with the assessing BIA, the Panel BIA(s) will notify the DoLS Team
- c) The DoLS Team will alert the Head of Service (Safeguarding) (or in her absence, the Mental Capacity Act Strategic Lead), who will decide whether or not the application will be submitted to the signatory for authorisation, notwithstanding the unresolved dispute. Whether further action is required in respect of any BIA's practice, will be established in accordance with paragraph 4.3 of the BIA Competencies Framework
- d) Where the Head of Service (Safeguarding) (or, as above) decides to submit the application to the signatory for authorisation, the DoLS Team will alert the signatory to a) the nature of the dispute between the Panel BIA(s) and assessing BIA, b) the fact that as a result of the dispute, the Panel was unable to approve the application for authorisation.

Where the application is so submitted, the DoLS Team will provide the signatory with the information detailed at d) above.

For all disputes/ disagreements Panel BIAs and the assessing BIA must update the Data Quality Task to ensure there is an audit trail of amendments requested and reasons for dispute/ disagreements.

#### **Membership and Functionality of the Panel**

- The Panel does not generally meet in person. The Panel generally takes the form of BIAs separately reading assessments allocated to them, and liaising with each other and/ or the DoLS Team as required
- The Panel will be functional when a minimum of two members contribute, at least one of which will be a BIA; a third member (either a BIA or other suitable person drawn from a list of approved eligible officers/ managers) will be consulted if there is disagreement or where there is a conflict of interest between BIAs
- Panel members may refer to or co-opt suitably qualified professionals to act in an advisory capacity as and when required
- Other professional staff managers (e.g. social workers/ BIAs in training) may be invited to, or requested to attend, the Panel to gain appropriate experience
- BIAs will identify and declare any conflict of interest in order to maintain the integrity of the role and the Panel. Conflicts of interests may relate to previous cases or CoP involvement and/ or safeguarding processes and/or best interests meetings. Although, where known, conflicts of interest are taken into account when arranging for the attendance of BIAs at the Panel, each BIA is responsible for declaring and discussing any such conflicts before the start of or during any Panel meeting/ case discussion.

#### **Frequency of Panel meetings**

- The Panel will carry out its functions weekly (generally each Tuesday at 09:00am), virtually i.e. via email correspondence and/ or Teams/ Zoom, or more frequently if required
- If no referrals or recommendations for an authorisation are received, or if there are no Part 8 Reviews/ renewals or CoP matters to consider, the Panel may decide to meet to discuss other current DoLS/ DoL issues or be stood down if this is not needed
- If an urgent authorisation request is received, the Panel convene at the earliest practicable opportunity in order to implement timely authorisations.

#### **Support for the DoLS Panel**

- The MCA DoLS Team will ensure that weekly and urgent Panels are convened and supplied with the appropriate documentation
- If Panel members need guidance from senior staff, they will contact the Head of Service (Safeguarding). The Head of Service (Safeguarding) will escalate to ICB/ NELC if required.

**Appendix Two B – RAG rating scale for BIA assessments**

Level	Criterion	RAG
1	The Panel accept the assessment as reflecting appropriate professional and local standards. The assessment offers evidence and well-reasoned argument to demonstrate whether or not a deprivation of liberty is occurring, and whether such is in the best interests of P. No or only minor alterations are required.	Green (minor)
2	The Panel accept the assessment as reflecting appropriate professional and local standards. The assessment offers some evidence and reasoned argument to demonstrate whether or not a deprivation of liberty is occurring, and whether such is in the best interests of P. The assessment requires more than basic alterations by the BIA, including correction of errors or inclusion of additional evidence/ reasoning to support conclusions reached.	Amber (moderate)
3	The Panel does NOT accept the assessment as reflecting appropriate professional and local standards. The assessment DOES NOT offer adequate evidence or reasoned argument to demonstrate whether or not a deprivation of liberty is occurring, and whether such is in the best interests of P. The assessment may contain issues that cannot reasonably be rectified or the assessment is fatally flawed.	Red (major)



## Best Interests Assessor (BIA) Renewal process Training and Learning Log

*(Practicing BIAs: minimum of 4 DoLS assessment*

*& 18 hours MCA/DoLS related training/ year. Leadership BIAs:  
minimum of 2 DoLS assessments and 12 hours MCA/ DoLS  
related training/ year)*

Record of training, learning and  
assessments completed for Pre-  
Authorisation Review (DoLS) Panel

Name of BIA:

Date	Duration	Days/ hours	Training and Learning Activity (eg Courses, CPD, reflective practice)	Provider

<b>Totals</b>  <b>Days</b>		<b>Total</b>  <b>Hours</b>	
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Number of DOLS assessments (to be completed by the Panel)	
Data Quality Summary	No data quality = Minor data quality = Moderate Data quality = Substantial data quality =
Conversion percentage (75% to meet required assessment)	

Date of Approval:

**Appendix Four – Summary Checklist on Appointment/ Annual Revalidation (Practicing/ Leadership BIA)**

<b>Requirement</b>	<b>Evidence</b>	<b>Confirmed (Y/N)</b>
Adequate/ appropriate indemnity arrangements which provide cover for liabilities that might arise in connection with carrying out best interests assessments	Employment by a local partner whose organisational indemnity policy covers the BIA's activity	
Appropriate criminal record certificate issued under the Police Act 1997	Employment by a local partner whose organisation renews and retains criminal record certificate on behalf of the BIA	
Confirmation of registration with BIA's relevant profession	Professional registration provided by BIA	
Confirmation of at least 2 years' post-registration experience	Employment by local partner in the relevant role, for at least 2 years	
Confirmation of BIA training approved by the Secretary of State	Training completion certificate provided by BIA. <i>INITIAL APPOINTMENT ONLY</i>	
Where completion of BIA training was more than 12 months ago, evidence of further training relevant to role as BIA	<ol style="list-style-type: none"> <li>1. BIA Training and Learning log or agreed alternative</li> <li>2. Attendance at regional DoLS conference or agreed other(s)</li> </ol>	
Applied knowledge of the MCA and related Code of Practice, and the ability to keep appropriate records and to provide clear and reasoned reports in accordance with legal requirements and good practice	<ol style="list-style-type: none"> <li>1. Attendance at Panel</li> <li>2. Completion of required number of BIA assessments; at least 75% rated green/ amber</li> <li>3. Completion of required number of hours training</li> </ol>	
Has the skills necessary to obtain, evaluate and analyse complex evidence and differing views and to weigh them appropriately in decision-making	<ol style="list-style-type: none"> <li>1. Completion of required number of BIA assessments; at least 75% rated green/ amber</li> <li>2. Completion of required number of hours training</li> </ol>	
Observed practice	<ol style="list-style-type: none"> <li>1. Attendance at Panel/ feedback from Panel</li> <li>2. Contribution to BIA Forum agenda/ items</li> <li>3. Feedback from P/ RPR/ others</li> </ol>	
Reflective learning	<ol style="list-style-type: none"> <li>1. BIA Training and Learning log or agreed alternative</li> <li>2. Contribution to reporting</li> <li>3. Professional practice reflective learning log</li> </ol>	
Knowledge and understanding of the multi-agency policy and procedures for safeguarding adults in the area in which P resides	Confirmation of training completion by BIA	

### Appendix Five - Summary Checklist on Appointment/ Revalidation of Independent BIA

Requirement	Evidence	Confirmed (Y/N)
Adequate/ appropriate indemnity arrangements which provide cover for liabilities that might arise in connection with carrying out best interests assessments	Indemnity insurance policy documents provided by BIA	
Appropriate criminal record certificate issued under the Police Act 1997	Appropriate certificate provided by BIA	
Confirmation of registration with BIA's relevant profession	Registration certificate provided by BIA	
Confirmation of at least 2 years' post-registration experience	Anonymised portfolio of work provided by BIA/ confirmation from BIA	
Confirmation of BIA training approved by Secretary of State	Training completion certificate provided. <i>INITIAL APPOINTMENT ONLY</i>	
Where completion of BIA training was more than 12 months ago, evidence of further training relevant to role as BIA	<ol style="list-style-type: none"> <li>1. BIA Training and Learning log, or agreed alternative</li> <li>2. Attendance at regular professional supervision; confirmed by BIA</li> </ol>	
Applied knowledge of the MCA and related Code of Practice, and the ability to keep appropriate records and to provide clear and reasoned reports in accordance with legal requirements and good practice	<ol style="list-style-type: none"> <li>1. Completion of required number of BIA assessments; at least 75% rated green/amber</li> <li>2. Completion of required number of hours training</li> <li>3. Updated, anonymised portfolio of not more than 12 months old</li> <li>4. Two references of not more than 12 months old</li> </ol>	
Has the skills necessary to obtain, evaluate and analyse complex evidence and differing views and to weigh them appropriately in decision-making	<ol style="list-style-type: none"> <li>1. Completion of required number of BIA assessments; at least 75% rated green/amber</li> <li>2. Completion of required hours training</li> <li>3. Updated, anonymised portfolio of no more than 12 months old</li> <li>4. Completion of required number of BIA assessments; at least 75% rated green/amber</li> </ol>	
Observed practice	<ol style="list-style-type: none"> <li>1. Feedback from Panel</li> <li>2. Feedback from P/ RPR/ others</li> </ol>	
Reflective learning	<ol style="list-style-type: none"> <li>1. BIA Training and Learning log or agreed alternative</li> <li>2. Professional practice reflective learning log</li> </ol>	
Knowledge and understanding of the multi-agency policy/ procedures for safeguarding adults in the area where P resides	Confirmation by BIA	
Secure and confidential processing of data	Completion of Data Processing Agreement	

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- <sup>i</sup> MCA DoLS Code of Practice, paragraph 4.16
- <sup>ii</sup> MCA DoLS Code of Practice, paragraph 4.15
- <sup>iii</sup> MCA, Schedule A1, Part 8. Broadly, Managing Authorities (MAs) must request a review where it appears the qualifying requirements for a DoLS authorisation may not be met, or where there may be a change in qualifying requirements. Eligible persons (P, their representative (RPR), the MA) may also request a review on the same grounds
- <sup>iv</sup> The Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008/1858, regulation 5(2)
- <sup>v</sup> The Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008/1858, regulation 3(2)/ 3(2A) and the MCA DoLS Code of Practice, paragraph 4.18
- <sup>vi</sup> The Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008/1858, regulation 3(4)
- <sup>vii</sup> The Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008/1858, regulation 5(3)
- <sup>viii</sup> The Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008/1858, regulation 3(3)
- <sup>ix</sup> The Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008/1858, regulation 5(3)
- <sup>x</sup> MCA DoLS Code of Practice, paragraph 4.66
- <sup>xi</sup> MCA DoLS Code of Practice, paragraph 4.69
- <sup>xii</sup> Mental Capacity Act 2005, Schedule A1, paragraph 39
- <sup>xiii</sup> Mental Capacity Act 2005, Schedule A1, paragraph 132
- <sup>xiv</sup> MCA DoLS Code of Practice, paragraph 4.66
- <sup>xv</sup> MCA DoLS Code of Practice, adapted from paragraphs 4.66. and 4.68
- <sup>xvi</sup> Mental Capacity Act 2005, Schedule A1, paragraph 133 states that the assessment must be provided ‘as soon as is practicable after carrying out the assessment’. The timeframe for assessments is given in the Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008/1858, part 4
- <sup>xvii</sup> Mental Capacity Act 2005, Schedule A1, paragraph 41
- <sup>xviii</sup> Mental Capacity Act 2005, Schedule A1, paragraphs 42 and 43
- <sup>xix</sup> MCA DoLS Code of Practice, paragraph 4.75
- <sup>xx</sup> MCA DoLS Code of Practice, paragraph 3.19
- <sup>xxi</sup> MCA DoLS Code of Practice, paragraph 8.26
- <sup>xxii</sup> Of particular relevance are: AJ v a Local Authority [2015] EWCOP 5 and Re RD and Others [2016] EWCOP 49
- <sup>xxiii</sup> National MCA Competency Framework, amended/ summarised from page 4