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## DoLS (Deprivation of Liberty Safeguards)

- LA must seek legal authorisation if care/treatment decisions are likely to breach Article 5 Human Right of Liberty
- Required when 'acid test' likely to be met:
  - person lacks capacity
  - subject to continuous supervision & control
  - not free to leave
- Applies to anyone 18+ **BUT** for 16 – 18 years **MUST** seek Court of Protection Authorisation (CoP DOLs)
- DoLS currently under review (2019) – to be replaced by LPS – Liberty Protection Safeguards
- See DoLS/LPS 7 Minute Guide

## Remember:

- Always assume capacity until proven otherwise
- Do not use age, condition, disability or appearance to assume lack of capacity
- Lack of capacity must be due to mind or brain impairment/disturbance
- Refusal of care/treatment does not mean a person lacks capacity
- A person with capacity has the right to make unwise decisions – think about risk management plans when the MCA cannot be used

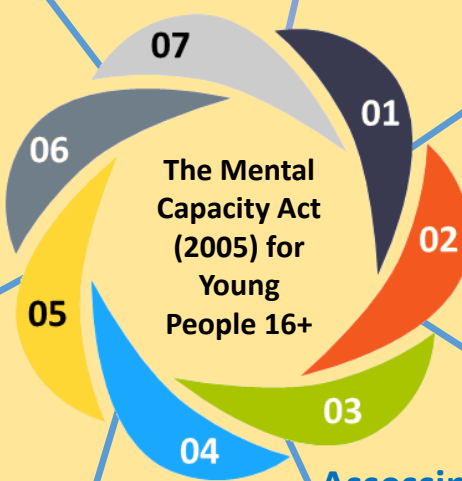
**NB: If not completing an MCA assessment have you recorded the reason why? Essential for complex cases.**

## Key Aims

- Empowerment for people aged 16+ to have control about decisions affecting them
- Protection for those who may lack capacity
- Sets out a legal framework
- Builds on respect for Human Rights
- Underpinned by 5 Key Principles
- See MCA Code of Practice: <https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice>
- See also NICE Guidance: *Decision Making & Mental Capacity '18:* [www.nice.org.uk](http://www.nice.org.uk)

### The Key Principles:

1. Presumption of Capacity
2. Take all practicable steps to support the person to make their own decisions
3. People with capacity have the right to make unwise decisions
4. Any decision made/act done on behalf of a person who lacks capacity must be in their best interests
5. Best interest decisions must be less restrictive of basic rights



**The Mental Capacity Act (2005) for Young People 16+**

## Best Interests (BIDs)

- Best Interest decisions are made only when a person has been assessed as lacking capacity due to impairment of mind/brain function.
- Can the decision wait? If it is not urgent and the person may regain capacity then we should wait until they are able to make the decision themselves
- Follow the checklist in the Code of Practice before acting in Best Interests ie:
  - consult with others
  - consider the values, wishes feelings of the person
  - be non discriminatory
  - ensure less restrictive option

**Ensure MC2 completed**

## Assessing Capacity

The 'functional' test:  
Can the person.....

- **Understand** the relevant information for the decision to be made
- **Retain** the information (at least until the end of the test)
- **Weigh** up the information (consider the pro's & cons)
- **Communicate** their decision

**NB:** A person will only be deemed to lack capacity when they cannot do 1 or more of the 4 stages above & the diagnostic test has been met

**Ensure MC1 completed**

## Assessing Capacity

The 'diagnostic test':

- Does the person have an impairment or disturbance to mind or brain function? (permanent or temporary)
- Is that impairment or disturbance likely to affect their ability to make a decision at the time it needs to be made?

If 'yes' then proceed to the 'functional' test (four stage assessment)

**NB: Capacity to make a decision is time & decision specific**

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