

**DOLS BEST INTERESTS ASSESSORS (BIA) AND MENTAL
HEALTH ASSESSORS (MHA)
APPOINTMENT AND RE-APPOINTMENT POLICY**

Version 1.1

Release	26 th May 2010
Department	Community Care and Housing
Owner	John White
Author	John White
Filename	BIA Appointment & Re-appointment Policy.doc
Review Due	29th September 2011

Revision History (Latest at top of list)

Revision date	Summary of Changes

Contents

Introduction	3
Purpose	3
Scope	3
Definitions	4
Legal Context	4
BIA Role Specification	5
Continuing Professional Development	6
Public & Employers Liability Insurance	6
Line Management Arrangements	6
Performance Management	7
Workforce Needs	7
Training Implementation	8
Monitoring and Review	8

1. Introduction

This policy, jointly agreed by South Gloucestershire Council's Community Care and Housing Department and NHS South Gloucestershire, is for the appointment and re-appointment of Best Interest Assessors (BIA's) under paragraph 38 of Schedule A1 to the Mental Capacity Act 2005.

BIAs within South Gloucestershire are required to complete training approved by the Secretary of State, in order to be authorised from 1st April 2009 (the date at which the Deprivation of Liberty Safeguards came into force).

Eligible professionals must attain the requirements as issued by the Department of Health and must undertake further relevant training to the satisfaction of the Supervisory Body.

2. Purpose

This policy aims to provide an equitable and consistent approach to the selection, approval and support of eligible professionals to become Best Interests Assessors operating within South Gloucestershire and authorised by the two Supervisory Bodies, South Gloucestershire Council and NHS South Gloucestershire.

3. Scope

These procedures will apply to the following staff seeking training and approval as Best Interests Assessors:

- Qualified social workers who are registered with the GSCC
- Qualified Nurses registered in Sub-Part 1 of the Nurses' Part of the Register maintained under Article 5 of the Nursing and Midwifery Order 2001
- Occupational Therapists registered in Part 6 of the Register maintained under Article 5 of the Health Professions Order 2001
- Chartered Psychologists who are listed in the British Psychological Society's Register of Chartered Psychologists and who hold a relevant practicing certificate issued by that Society
- Team managers of BIAs and professional leads for BIAs.

4. Definitions

BIA means Best Interests Assessor, a statutory role within the MCA 2005.

GSCC means the General Social Care Council.

MHA means Mental Health Assessor

MCA means the Mental Capacity Act 2005

MHA (1983) means the Mental Health Act 1983.

PQ Graduate Specialist Award means the post qualifying award in Social Work / Professional Practice.

5. Legal Context

The Deprivation of Liberty Safeguards were added to the Mental Capacity Act (2005) in 2008 and can be found in Part 2, chapter 2, Sections 4A and 4B, and Schedules A1 and 1A of the Act. The purpose of the safeguards is to prevent breaches of the European Convention on Human Rights (ECHR) such as the one identified by the judgement of the European Court of Human Rights (ECtHR) in the case of HL V the United Kingdom.

The Safeguards apply to people in England and Wales who have a mental disorder and lack capacity to consent to the arrangements made for their care or treatment, but for whom receiving care or treatment in circumstances that amount to a deprivation of liberty may be necessary to protect them from harm and appears to be in their best interests (Code of Practice 1.7). In order to come within the scope of a deprivation of liberty authorisation, a person must be detained in a hospital or care home, for the purpose of being given care or treatment in circumstances that amount to a deprivation of liberty (1.8).

The Regulations state that the role of BIA can be undertaken by the following professionals (also see section 3):

- Approved Mental Health Professionals, Social workers who are registered with their appropriate registration body (in England this is the GSCC),
- First Level Nurses registered in Sub-Part 1 of the Nurses' Part of the Register maintained under article 5 of the Nursing and Midwifery Order 2001,
- Occupational Therapists registered in Part 6 of the register maintained under article 5 of the Health Professions Order 200,
- Chartered Psychologists who are listed in the British Psychological Society's Register of Chartered Psychologists and who hold a relevant practising certificate issued by that Society and is not suspended from the register or list relevant to the person's profession and has at least two years post registration experience in that profession.

BIAs must also have up to date enhanced CRB clearance. Clearance should be in accordance with the originating employer's policy on safer recruitment and meet the provisions and requirements of the guidance from NHS employers. Specifically disclosure must be at enhanced level and must be undertaken every three years. Checks must also be made of the appropriate Barred Lists as guided by the Independent Safeguarding Authority.

The Supervisory Bodies, as commissioning bodies for care homes and hospitals in South Gloucestershire must be satisfied that a prospective BIA has successfully completed a course of study approved by the Secretary of State, that they have attended all the required teaching provided by an approved university, or by its approved provider and achieved a satisfactory standard in all the required assignments and / or examinations.

The Supervisory Bodies may require an assessor to have skills or experience not listed in the regulations to satisfy themselves that a BIA meets their

additional requirements. The Supervisory Bodies may set local standards, but the regulations have set the minimum national standard as described above.

6. The BIA Role Specification

The BIA is responsible for conducting a range of assessments to ascertain whether an authorisation for deprivation of liberty will be granted (see The Deprivation of Liberty Safeguards Interagency Policy and Procedures section 4). Chapter 4, section 4.13 of the DoLS Code of Practice and section 6.4 of the aforementioned policy identifies how assessors will be selected to carry out specific assessments.

7. Continuing Professional Development

The Supervisory Bodies will ensure that relevant ongoing training opportunities are available to all BIAs. This will enable them to keep abreast of current developments and ensure that their practice is Evidence Based whilst contributing to the Continuing Professional Development requirements of their respective registration bodies.

BIAs will be able to access joint training with partner agencies on practice related to the interfaces between the Mental Health Act 1983 (amended 2007) and the Mental Capacity Act (2005).

BIAs will be provided with a copy of Deprivation of Liberty Safeguards Code of Practice and the Mental Capacity Act Code of Practice, along with hard or electronic copies of all required standard forms.

The Supervisory Bodies, through the DoLS Service, will be responsible for ensuring that bi-monthly BIA meetings, adopting Action Learning Principles are held where:

- i) anonymised cases can be discussed and learning can be shared
- ii) current research, literature, case law and relevant regional & national news can be disseminated
- iii) There is ongoing training relevant to the Deprivation of Liberty Safeguards including DoLS specific & DoLS related training.

BIAs will be made aware of learning which is available on the Mental Health Act, the Mental Capacity Act, DoLS and the interface between the Mental Health Act and the Mental Capacity Act.

BIAs are themselves responsible for ensuring that they attend a minimum of 3 BIA meetings each year and also attend an annual Deprivation of Liberty workshop or training event

MHAs are required to undertake a minimum of 2 hours DOLS related development each year in order to be commissioned to undertake Mental Health and Eligibility assessments for the Supervisory Bodies in South Gloucestershire.

8. Public & Employers Liability Insurance

The Supervisory Bodies have a responsibility to ensure that appropriate insurance is in place for BIAs undertaking their role under the DoLS process. Where an NHS Trust directly employs BIAs and MHAs they will be covered for their role whether they are providing an assessment for their employing trust, another NHS trust or a Local Authority, provided that they do so in accordance with their NHS employment and are performing a healthcare function.

If a formal agreement is in place with a Local Authority in accordance with Section 75 of the NHS Act 2006, NHSLA Schemes will respond, provided that the assessment is carried out by an NHS employee in the course of their employment.

Staff employed by a Local Authority will not benefit from NHS Indemnity. South Gloucestershire Council BIAs are appropriately covered for any work they are required to undertake for or on behalf of the Council in respect of MCA/DoLS, regardless of where the work is undertaken.

BIAs & MHAs working as independent practitioners are not covered by NHS or LA indemnity and would need to take out their own professional indemnity insurance. Currently there are no independent BIAs in South Gloucestershire.

9. Line Management Arrangements

Line management arrangements and responsibility for supervision of the BIA's substantive role will remain with the line manager from their substantive team. The DoLS Lead will, however, provide professional support and guidance with regard to any work undertaken as a BIA.

It is acknowledged that it may be difficult for an employee's line manager to deal with performance concerns in respect of the BIA role; there is therefore a role for the DoLS Service Lead to assist where required.

10. Performance Management

BIAs will have the opportunity though formal and professional supervision to receive feedback on the assessments they have completed. The DoLS Lead will monitor the quality of BIA assessments.

Monitoring of BIA's availability to carry out the BIA role will take place as part of the DoLS Service's commitment to provide BIAs within relevant statutory time scales when applications have been received.

Any allegations of misconduct or capability and performance will be referred to the BIA's employer and will be dealt with through the disciplinary procedure of the employing organisation.

Any issues that require to be referred to the professional body such as the

NMS or GSCC will be referred using the employer's policy for referral to professional bodies.

11. Workforce Needs

The DoLS Service Lead will identify when and in what professional fields, further BIAs are needed, and will contribute to workforce planning for this statutory role. This may also include a reduction in the number of contracted BIAs if numbers & skills don't match demand. Identification of a need for further BIAs will be approved by the Supervisory Body.

Prospective BIAs will be subject to a selection process and must attend training as set out in section 5 and successfully complete this course with a pass at a level set by the accrediting body.

It is recognised that social workers, nurses, occupational therapists and chartered psychologists who have completed training as an Approved Mental Health Professional under the Mental Health Act 1983 (amended 2007) will be qualified and eligible to practice as BIAs. Similarly social workers and other professionals who undertake the post qualifying award in social work with Adults may also be eligible to practice as BIAs.

In both cases, these professionals will not automatically be included on the list of practicing BIAs and would need to be approved by the Supervisory Body in the event that additional BIAs are required. They would however, be approached in the first instance in the event that the number of existing Best Interests Assessors reduces and more are needed to meet the needs of the Supervisory Bodies. However, to ensure that the needs of the South Gloucestershire Supervisory Bodies can be met at all times, professionals who have successfully passed the requisite training but who are not approved at that time, will be eligible to continue their professional development in this area as identified in 6, to ensure that they retain the relevant values, knowledge and skills to undertake the role when required.

12. Training Implementation

The Annual Training plan for DoLS and for ongoing BIA training is being implemented within Community Care and Housing Department of South Gloucestershire County Council.

13. Monitoring and Review

The policy will be monitored by the DoLS Service Lead, the Supervisory Bodies and relevant workforce development leads. A review will be carried out on an annual basis.

Updated September 2010