

**Commissioner MCA and DoLS responsibilities checklist**

**Version 1.6**

**05/02/2016**

**1. Purpose**

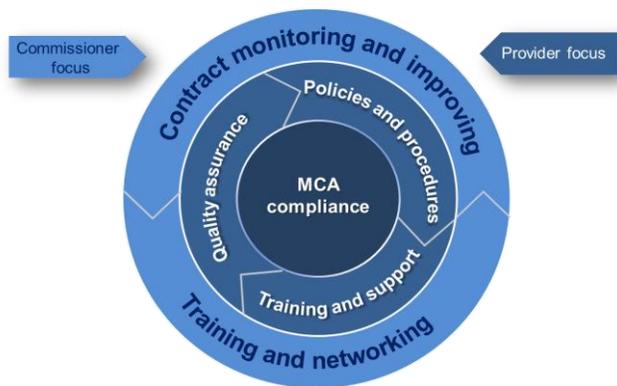
The purpose of this document is to outline commissioner Mental Capacity Act (MCA) and Deprivation of Liberty Safeguards (DoLS) assurance responsibilities for the services they commission.

**2. Audience**

The audience for this document is the London NHS Commissioner MCA Steering Board.

**3. Background**

NHS commissioners identified a lack of clarity about their responsibility and accountability for gaining MCA assurance in the September 2015 Steering Board meeting. A commissioner checklist to clearly outline CCG and CCG MCA lead responsibilities for ensuring MCA compliance has therefore been developed. This commissioner checklist has been structured in line with the MCA compliance framework below.



**4. Overview**

This document contains:

- An overview of CCG and CCG MCA lead responsibilities
- MCA lead day-to-day activities
- Contract monitoring elements

This checklist is based on the [NHS England MCA guidance document for commissioners](#).

## 5. CCG responsibilities

CCGs are required to:

<input type="checkbox"/>	Have a named responsible CCG MCA lead in place, who is appropriately trained <sup>1</sup>
<input type="checkbox"/>	Have an MCA/DoLS policy or assurance framework in place
<input type="checkbox"/>	Deliver or commission mandatory MCA/DoLS training for all commissioners <sup>1</sup>

## 6. MCA lead responsibilities

The CCG MCA lead is required to ensure that:

<input type="checkbox"/>	Healthcare services provided within the CCG's geographical area demonstrate compliance with the MCA (see section 8 for how services should demonstrate compliance) <sup>2</sup>
<input type="checkbox"/>	Services the CCG commissions/joint commissions/co-commissions for people aged over 16 demonstrate compliance with the MCA. This can include services provided outside the CCGs area

## 7. MCA lead day to day activities

### 7.1 Commissioner focus

#### 7.1.1 Contract monitoring

<input type="checkbox"/>	Ensure all services commissioned by the CCG have contracts in place with MCA expectations in service level agreements
<input type="checkbox"/>	Ensure all contracts include the appropriate MCA/DoLS requirements within quality monitoring mechanisms and quality monitoring elements (see section 8)

#### 7.1.2 MCA training and networking

<input type="checkbox"/>	Provide technical MCA/DoLS advice to and raise MCA awareness amongst CCG colleagues
<input type="checkbox"/>	Ensure appropriate CCG staff are trained for MCA/DoLS processes <sup>1</sup>
<input type="checkbox"/>	Keep up to date with any changes in legislation, best practice and useful MCA/DoLS tools
<input type="checkbox"/>	If trained as a best interests assessor, offer support to the local authority regarding best interest assessments, where appropriate

<sup>1</sup> Refer to the commissioner MCA training checklist for details on commissioner training requirements.

<sup>2</sup> It is important commissioners have an oversight that residents in their area are being treated in accordance with the MCA. Whether the quality information is collected directly from the provider or via the lead commissioner is at the discretion of the CCG.

## 7.2 Provider focus

### 7.2.1 Quality assurance

<input type="checkbox"/>	Collect evidence from providers that shows they are fully compliant with the MCA/DoLS (see section 8)
<input type="checkbox"/>	Collect evidence of MCA/DoLS compliance from lead commissioners regarding providers in local area that the CCG does not have a contract with

### 7.2.2 Policies and procedures

<input type="checkbox"/>	Check provider MCA/DoLS policies and procedures <sup>3</sup>
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### 7.2.3 MCA training and support<sup>4</sup>

<input type="checkbox"/>	Advise providers about complex MCA/DoLS cases (e.g. conflicting views on capacity)
<input type="checkbox"/>	Support providers who are not fully compliant with the MCA/DoLS
<input type="checkbox"/>	Advise about approved MCA/DoLS training for providers in area <sup>5</sup>

## 7.3 Service user focus

### 7.3.1 MCA support

<input type="checkbox"/>	Ensure service users and carers have access to MCA/DoLS information (posters/leaflets/CCG website)
<input type="checkbox"/>	Ensure NHS patients have access to advocacy services in the area

### 7.3.2 Quality assurance

<input type="checkbox"/>	Collect patient and carer MCA feedback (directly or indirectly via providers)
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<sup>3</sup> Refer to [NHS England MCA guidance document for commissioners](#) for more detail.

<sup>4</sup> Follow advice on [SCIE website](#).

<sup>5</sup> Small providers (e.g. independent nursing homes) may require additional MCA training support and guidance from commissioner MCA leads (e.g. multiagency training funded by Safeguarding Adults Board). An approved provider MCA training checklist is to be agreed by London NHS Commissioner MCA Steering Board.

## 8. Contract monitoring

For CCGs to be assured that services comply with the MCA/DoLS, contracts with providers should include:

- Quality monitoring mechanisms
- Key performance indicators (KPIs)
- Non-quantitative quality monitoring elements

### 8.1 Quality monitoring mechanisms

MCA/DoLS quality assurance can be measured using a combination of the following methods:

<input type="checkbox"/>	MCA audits
<input type="checkbox"/>	MCA reports
<input type="checkbox"/>	MCA meetings
<input type="checkbox"/>	Provider site visits
<input type="checkbox"/>	MCA data collections (KPIs)
<input type="checkbox"/>	MCA CQUINs (Commissioning for Quality and Innovation) payment framework

### 8.2 KPIs

The following KPIs should be assessed through data collections<sup>6</sup> (e.g. dashboards) and CQUINs:

<input type="checkbox"/>	Numbers trained (level 1, level 2, level 3) <sup>7</sup>
<input type="checkbox"/>	IMCA (Independent Mental Capacity Advocate) referral numbers and waiting times (by referral reasons – serious medical treatment, accommodation, care reviews, adult protection, DoLS)
<input type="checkbox"/>	Number of service users with an Advance Care Plan (ACP) in place <sup>8</sup>
<input type="checkbox"/>	Number of authorised/rejected/outstanding standard/urgent DoLS referrals made to LA (care homes, per ward <sup>9</sup> for hospitals)
<input type="checkbox"/>	Average number of weeks that outstanding DoLS referrals made to the LA have breached statutory timeframes
<input type="checkbox"/>	Number of authorised/rejected/outstanding CCG DoL referrals made to Court of Protection (settings other than care homes or hospitals)
<input type="checkbox"/>	Average number of weeks that outstanding CCG DoL referrals made to Court of Protection have breached statutory timeframes

<sup>6</sup> It is important CCGs are assured providers have systems in place to capture the required KPIs. CCGs are advised to use the lead commissioner model and work closely with their LA (for DoLS KPIs) to avoid data collection duplication.

<sup>7</sup> Refer to Provider MCA training quality standards checklist in MCA lead toolkit.

<sup>8</sup> An ACP would include any DNACPR (do not attempt CPR) decisions or ADRTs (advance decision to refuse treatment).

<sup>9</sup> This helps providers and commissioners understand the impact of training and identify gaps.

### 8.3 Non-quantitative quality monitoring elements

The following elements are difficult to measure quantitatively, but could be assessed through audits, reports, site visits and meetings. Please refer to the [NHS England MCA guidance document for commissioners](#) for further detail.

<input type="checkbox"/>	MCA/DoLS policies (Pan-London provider policies)
<input type="checkbox"/>	MCA is referenced in all relevant policies and pathways (e.g. consent, restraint, transition for young people, dementia, end of life care)
<input type="checkbox"/>	Quality, delivery and implementation of MCA and DoLS training <sup>7</sup>
<input type="checkbox"/>	Evidence of mental capacity assessments (e.g. anonymised sampling of capacity assessments)
<input type="checkbox"/>	Evidence of care planning and best interest decisions (e.g. anonymised sampling of best interest documentation)
<input type="checkbox"/>	Evidence of supported decision making (e.g. local arrangements around how staff support patients to enhance their ability to make decisions)
<input type="checkbox"/>	Evidence that supporters/advocates have been consulted following DNACPR notices for people lacking capacity
<input type="checkbox"/>	Evidence that the MCA is linked into the organisation's systems and processes relating to improving service users' experience and the quality of their care and treatment
<input type="checkbox"/>	Evidence of registered Lasting Powers of Attorneys (LPAs) for health and welfare
<input type="checkbox"/>	Prompts to consider capacity in key care pathways <sup>10</sup>
<input type="checkbox"/>	Evidence that the MCA features in job descriptions
<input type="checkbox"/>	Evidence that the MCA features in inductions
<input type="checkbox"/>	Evidence that the MCA features in appraisal systems
<input type="checkbox"/>	Policies on research recognise the rights of those lacking capacity
<input type="checkbox"/>	Governance processes <sup>11</sup>
<input type="checkbox"/>	Safeguarding enquiries <sup>12</sup>

<sup>10</sup> For example, transition for young people, dementia and end of life care pathways.

<sup>11</sup> Please refer to the [NHS England MCA guidance document for commissioners](#) for further detail.

<sup>12</sup> For example, minutes from safeguarding meetings, risk assessments, care/treatment plans.