

Admission of Adults to Mental Health Hospitals: Four routes

For a person needing treatment for mental disorder ^a
(letter references in this chart are detailed on the next page)

Does the person have capacity to consent to admission? ^b

Yes

No

Does the person **consent** to admission? (voluntary AND informed – understanding the nature, purpose and consequences)

Are they **objecting** ^c to admission or treatment/care?

Yes

No

Yes

No

1. Voluntary admission
with their consent

2. Mental Health Act 1983
(if criteria are met)

3. Mental Capacity Act
(assessment of capacity and best interests assessment on record)

Is the person subject to: complete supervision and control AND not free to leave ^d

Yes – either DoLS or the Mental Health Act 1983 can be used ^e
(MHA Code of Practice 13.49)

NOTE: If any of these are present use the Mental Health Act 1983

- Person under 18
- Risk of harm to others
- Fluctuating capacity
- Advance decision refusing mental health treatment ^f
- Lasting power of attorney or deputy refusing admission or mental health treatment

4. Court order

This would only be because of exceptional circumstances where neither the MHA nor DoLS can be applied.

a. Treatment for mental disorder

The Mental Health Act Code of Practice (para 24.3) states: *'In the Act, 'medical treatment' includes nursing, psychological intervention and specialist mental health habilitation, rehabilitation and care ...'* and (para 13.37): *'This may include treatment of physical conditions that is intended to alleviate or prevent a worsening of symptoms or a manifestation of the mental disorder (eg a clozapine blood test) or where the treatment is otherwise part of, or ancillary to, treatment for mental disorder.'*

b. Capacity to consent to admission

Case law has considered what a person needs to understand to have capacity to consent to admission to a mental health ward. The cases are: *AM v SLAM & the Secretary of State for Health [2013] UKUT 0365 (AAC)* and *A PCT v LDV, CC & B Healthcare Group [2013] EWHC 272* (see page 47).

c. What is objecting?

The Mental Capacity Act (Schedule 1A) states: *'In determining whether or not P objects to something, regard must be had to all the circumstances (so far as they are reasonably ascertainable), including the following - (a) P's behaviour; (b) P's wishes and feelings; (c) P's views, beliefs and values. (d) But regard is to be had to circumstances from the past only so far as it is still appropriate to have regard to them.'*

The DoLS Code of Practice (para 4.47) notes: *'...whether that objection is reasonable or not is not the issue'*. and (para 4.46): *'If there is reason to think that a person would object if able to do so, the person should be assumed to be objecting.'*

The Mental Health Act Code of Practice²⁰: *'In deciding whether a patient objects to being admitted to hospital, or to some or all of the treatment they will receive there for mental disorder, decision-makers should err on the side of caution and, where in doubt, take the position that a patient is objecting.'*

d. Complete supervision and control and not free to leave

The Care Quality Commission⁷, referring to the Supreme Court ruling in *Cheshire West*, has stated: *'The 'acid test' for a deprivation of liberty is if the person is not free to leave and is under continuous supervision. This is likely to be met for any incapacitated patient who requires psychiatric hospital admission.'*

e. Either DoLS or the Mental Health Act can be used

The Mental Health Act Code of Practice (para 13.58) comments: *'The choice of legal regime should never be based on a general preference for one regime or the other, or because one regime is more familiar to the decision-maker than the other ... Both regimes provide appropriate procedural safeguards to ensure the rights of the person concerned are protected during their detention. Decision-makers should not therefore proceed on the basis that one regime generally provides greater safeguards than the other.'*

f. Electro-convulsive therapy (ECT)

Special rules apply to the use of ECT. If a person has a valid advance decision or lasting power of attorney refusing ECT then the Mental Health Act cannot be used to override this unless the use of ECT is considered immediately necessary to save the patient's life or prevent a serious deterioration (Section 62 (1A)).

Questions

What authority is required to treat a person under DoLS?

Treatment of a patient under DoLS is either with their consent (if they have capacity to consent to the specific treatment) or through Section 4 of the Mental Capacity Act, in their best interests (if they lack capacity to consent to the specific treatment).

Which Act has more rights for the patient?

See page 112 which provides detailed information regarding rights.

What if people disagree about which Act to use?

The Mental Health Act Code of Practice (para 13.60) states: *'The most pressing concern should always be that if an individual lacks capacity to consent to the matter in question and is deprived of their liberty they should receive the safeguards afforded under either the Act or through a DoLS authorisation or a Court of Protection order.'*