directors of adass adult social services West Midlands

A practical guide to proceeding with DoLS referrals after the Supreme Court judgement 2/6/2026

Referrals

A Form 1 is needed if

- It appears to the managing authority that the person is or will be a detained resident
- This means that the person is likely to meet a multi factorial test and not be able to give valid consent. We are looking for information and evidence about the following
    - Type, duration, effects and manner of implementation of the measures
    - Whether the person is compliant or objecting, expressing a wish to leave, trying to leave
    - Whether the persons current or prior wishes suggest that they would want to leave
    - Whether coercion is present or the use sedative medication
    - Whether the measures in place go beyond what you would expect in that setting
    - Information about the relative normality of the placement
    - Information about the purpose of the measure/s
    - Information as to whether the arrangements accord with persons wishes and feelings
    - Information about whether the person can physically leave or whether a wish to leave would be facilitated
- It must also be likely that the person will meet all of the qualifying requirements
    - Age
    - Mental Capacity
    - Mental Health
    - Eligibility
    - No refusals
    - Best interests

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Allocations

Whilst it is recommended that DoLS teams carry on with business as usual, it will be necessary to scrutinise Forms 1s to make sure they meet the criteria above and reflect the changes following the Supreme Court judgment known as AGNI.

Prioritise incoming requests and continue allocating for assessment. Some of the factors on the existing ADASS priority tool are good indicators of priority still, particularly those around objection, wishing to leave or trying to leave. The assessment will need to apply the AGNI test not the ACID test.

BIAs who practised before Cheshire West in 2014 should take a lead on assessments and should upskill BIAs who trained after 2014.

Interim priority tool

<table>
<tr><td colspan="4">West Midlands Priority Tool</td></tr>
<tr><td></td><td>Indicators of high priority</td><td>High Priority</td><td>Not priority</td></tr>
<tr><td>1. Screen new Form 1s</td><td rowspan="4">• On the face of it, it will meet a multifactorial test
• The person is objecting
• The person is expressing a wish to leave or trying to leave
• The persons current or prior wishes suggest that they would want to leave
• Coercion is present or the use of sedative medication
• The measures in place go beyond what you would expect in that setting</td><td>allocate for Form 3 assessment</td><td>Add to waiting list/screen out if confident to make that decision based on available evidence/ Low priority allocate for 3A</td></tr>
<tr><td>2. Screen Form 2</td><td>allocate for Six equivalents or 3B</td><td>Add to waiting list/screen out if confident to make that decision based on available evidence/ Low priority allocate for 3A</td></tr>
<tr><td>3. Existing cases</td><td>Leave in force no action</td><td>Allocate for 3A review and cease</td></tr>
<tr><td>4. Waiting list</td><td>Prioritise allocate for a Form 3</td><td>Likelihood of not meeting new criteria Allocate for 3A assessment</td></tr>
</table>

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Renewals

Renewals should be treated with caution currently; it may not be wise to use six equivalent assessments before ensuring it is appropriate to rely on them. It would be useful to screen them first to ensure they are likely to meet the AGNI test and then proceed. Those which are deemed not to meet the AGNI test can be allowed to lapse, assuming an appropriate Form 2 has been received.

Reviews

As time and resources allow it will be necessary to start screening the backlog for any cases which will clearly not meet the AGNI test. There may be some acute hospital referrals which easily fall into this category. Others will need to be subject to a short and simple assessment using a new version 3A form.

DoLS teams will no doubt be asked to carry out Part 8 reviews of existing cases, the advice currently is to prioritise this against urgent incoming new referrals and process whichever is higher priority.

Care homes can be reminded that a DoLS authorisation is permissive not mandatory.

If there is workforce capacity then reviews should be prioritised and carried out using the new 3A form and prioritised as shown below.

What does an assessment look like now?

- Use a multifactorial test i.e. the AGNI test NOT the acid test
- Consider: Type, duration, effects and manner of implementation of the measures
- Be practical and realistic
- Is the person compliant or objecting, expressing a wish to leave, trying to leave
- Do their prior wishes suggest that they would want to leave
- Is coercion present or the use of sedative medication
- Do the measures in place go beyond what you would expect in that setting
- What is the relative normality of the placement, is this pretty much the only way the person could receive care
- What is the purpose of the measure/s
- Do the arrangements accord with persons wishes and feelings

BIAs should trust their judgement; this is a period of learning and exploring a new test.

The multifactorial assessment begins, as before, with the objective element and consideration of objection. The absence of objection will therefore prompt consideration of valid consent. NB: It is important to note that valid consent is only expected to apply to a relatively small cohort. The majority of situations which no longer need a standard authorisation will be because they fail the AGNI test.

Comparison

ACID test	AGNI test
Wide but superficial	Narrow but deep
Complete supervision and control	Type, duration, effects and manner of implementation of the measures
All gilded cages are in	Paradigm of a prisoner in a cell
Persons objections are not relevant	Objection is relevant
Liberty means the same for everyone	Some people cannot exercise liberty
Lack of capacity meets the subjective test	Subjective test is autonomous and there can be valid consent

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Guide to a new assessment

The AGNI test can be described as three Cs – Concrete situation, Context, Consent.

If BIAs follow this order it will help to build a picture of whether the person is objectively deprived of liberty.

The persons wishes and feelings are relevant to the objective element but also to the subjective element.

Having considered the concrete situation of the person, the BIA then needs to look in more detail at how the arrangements impact the person and what the context for them is. A useful measure at this stage is to look at the degree and intensity of the measures.

Finally, if there is an objective deprivation of liberty the BIA needs to consider if the person can give valid consent to it despite the fact that they lack mental capacity for the decision to be accommodated for the purpose of care/treatment.

Valid consent

In considering the persons wishes and feelings in relation to the arrangements, the following may be useful to consider:

- Any statements about their wishes and feelings in relation to the arrangements in place
- Any statements they have made about their residence in care,
- What is their general emotional state,
- What is the frequency with which they objects to the placement or ask to leave,

- What is the consistency of their express wishes or emotional state;
- Are here any potential alternative reasons for their express wishes or emotional state.

In considering whether the persons behaviour constitutes an objection consider:

- the possible reasons for their behaviour,
- whether they are being medicated for depression or being sedated,
- whether they actively try to leave the care home,
- whether they take preparatory steps to leave, e.g. packing bags,
- What is their demeanour and relationship with staff,
- Are there any records of challenging behaviour and the triggers for such behaviour.
- whether their behaviour is a response to particular aspects of the care arrangements or to the entirety of those arrangements.

(Based on *RD & Ors (Duties and Powers of Relevant Person's Representatives and Section 39D IMCAs*) [2016] EWCOP 49.)

People should be given all support necessary to enable communication of their wishes and feelings. Assessment will require scrutiny of care and/or medical notes and speaking to family and staff. It may require multiple visits.

All practitioners assessing wishes and feelings should be alert to circumstances that may impact someone's ability to express their wishes and feelings, for example:

- sedating medication
- fear of consequences
- perceived pressure
- feeling that they do not want to be a burden

If the BIA finds a person can give valid consent to the confinement, then there is no deprivation of liberty and no need to continue with any further assessments. It is likely that this will be recorded on a Form 3 where a capacity assessment will have been completed as usual but additional factors considered in relation to valid consent. However, it is important to begin an assessment with the objective element, if this is not met then there does not need to be consideration of any other factors.

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Data

West Midlands will be monitoring data to observe how referrals decrease and at what rate, how many authorisations are granted, how many 3As are utilised and whether and when backlogs show signs of reducing.

Forms

A new Form 3A has been uploaded for use along with the slightly revised Form 3s. These Forms reflect the AGNI test and will operate in the interim and possibly longer term. The other materials and guidance on the WMADASS website have all been marked as in need of review.

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