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**Title:** Nottinghamshire County Council Deprivation of Liberty Safeguards (DoLS) Policy

**Aim / Summary:**

To set the policy for the Deprivation of Liberty Safeguards for Nottinghamshire County Council, as the supervisory body and all managing authorities within Nottinghamshire

**Document type** (please choose one)

<b>Policy</b>	<b>X</b>	Guidance	
Strategy		Procedure	

**Approved by:**

**Version number:** 1

**Date approved:**

**Proposed review date:**

**Subject Areas** (choose all relevant)

About the Council		Older people	
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**Please include any supporting documents**

[Association of Directors of Adult Social Services Deprivation of Liberty Safeguards Forms](#)

**Review date**

**Amendments**

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## 1. Policy Statement and Scope

This policy provides a local framework for Deprivation of Liberty Safeguards (DoLS) within Nottinghamshire and sets out the processes and procedures that must be followed by those that have a duty of care towards a person who is, or may become, deprived of their liberty. This includes both managing authorities and Nottinghamshire County Council as the supervisory body.

Nottinghamshire County Council's Countywide DoLS Team is the single access point within Nottinghamshire for both care homes and hospitals, as managing authorities, to request DoLS assessments which are required in order for the supervisory body to consider a DoLS authorisation.

The Deprivation of Liberty Safeguards (DoLS) Code of Practice published under sections [42](#) and [43](#) of the Mental Capacity Act 2005 provides extensive guidance and information about the Act and how it works in practice and should remain the main point of reference for all staff working for Nottinghamshire County Council as well as partners working within this area

This policy should be read in conjunction with the [Deprivation of Liberty Safeguards Code of Practice](#) and the [Mental Capacity Act Code of Practice](#). The intention of this policy is to clearly outline the key responsibilities and procedures related to the implementation of the legislation within Nottinghamshire. It does not replace the DoLS Code of Practice or the MCA Code of Practice.

The procedures for this policy will be developed and documented in a separate Practice Guide. This will be published in due course.

## 2. Glossary of Terms

The following Glossary is provided to ensure a consistent understanding of terminology within this policy.<sup>1</sup>

**A managing authority is:** The person or body with management responsibility for the hospital or care home in which a person is, or may become, deprived of the liberty

**A supervisory body is:** The local authority (England) or local health board (Wales) that is responsible for considering a deprivation of liberty request received from a managing authority, commissioning the statutory assessments and, where all the assessments agree, authorising deprivation of liberty

**A relevant person is:** The person who is or may be deprived of their liberty and may be a patient in a hospital or a resident in a care home.

**A relevant person's representative is:** A person who is appointed to support and maintain contact with the relevant person. This person is independent of the managing authority or supervisory body. For people without friends or family to represent them a paid representative is appointed by the supervisory body.

**An independent mental capacity advocate (IMCA) is:** Someone who provides support and representation for a person who lacks capacity to make specific decisions, where the person has no-one else to support them.

**A best interests assessor is:** A suitably trained professional appointed by the supervisory body to consider whether deprivation of liberty would be in the relevant person's best interests.

**A mental health assessor is:** A suitably medically trained professional appointed by the supervisory body to consider whether the relevant person is suffering from any disorder or disability of mind (Including learning disabilities but not dependence on alcohol or drugs).

**A signatory is:** The appropriate level of manager from the supervisory body who can authorise deprivation of liberty and who may attach conditions which have been recommended by the best interests assessor.

**An unauthorised DoL is:** A situation in which a person is deprived of their liberty in a hospital or care home without the deprivation being authorised by either a standard or urgent deprivation of liberty authorisation.

**Part 8 review:** A formal, fresh look at a relevant person's situation where there has been, or may have been, a change of circumstances that may necessitate an

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<sup>1</sup> The Glossary of Terms is adapted from the DoLS Code of Practice Key words and phrases – pages 114-120

amendment to, or termination of, a standard authorisation. Part 8 refers to the section in Schedule 1A of the Mental Capacity Act 2005 that covers reviews and is used to distinguish these formal reviews from routine reviews of care for all residents.

**Age assessment:** An assessment of whether the person has reached the age of 18.

**Best Interests assessment:** An assessment of whether deprivation of liberty is in a detained person's best interests, is necessary to prevent harm to that person and is a proportionate response to the likelihood and seriousness of that harm.

**Eligibility assessment:** An assessment of whether or not the relevant person is rendered ineligible for standard deprivation of liberty authorisation because the authorisation would conflict with requirements that are, or could be, placed on the person under the Mental Health Act 1983.

**Mental capacity assessment:** An assessment of whether a person lacks capacity in relation to the question of whether or not they should be accommodated in the relevant hospital or care home for the purpose of being given care or treatment.

**Mental health assessment:** An assessment of whether the person has a mental disorder.

**No refusals assessment:** An assessment as to whether there is any other existing authority for decision-making for the relevant person that would prevent the giving of a standard authorisation. This could include a valid advance decision, or valid decision by a deputy or donee appointed under a Lasting Power of Attorney

**Nottinghamshire DoLS Team:** The Nottinghamshire DoLS Team undertake and / or co-ordinate all duties relating to DoLS on behalf of the supervisory body in Nottinghamshire

**Cheshire West Judgement:** On the 19 March 2014, the Supreme Court published its judgment in the case of P v Cheshire West and Chester Council and P and Q v Surrey County Council, which further defined the meaning of Deprivation of Liberty. The effect of this is that a much greater number of people in residential care homes, nursing homes and hospitals now come under the DoLS than previously and by law they must be assessed under the DoLS procedure.

### **3. Context**

The Mental Capacity Act 2005 (MCA) was introduced in part in April 2007 and fully implemented in October 2007. The Mental Health Act 2007, which received Royal Assent in July 2007, included an amendment to the Mental Capacity Act to introduce additional Deprivation of Liberty Safeguards implemented from the 1st April 2009.

The Deprivation of Liberty Safeguards (DoLS) were introduced to provide a legal framework for the deprivation of liberty for people who lack mental capacity to make decisions about their care arrangements themselves. They apply to people who are in hospital or residential/nursing care and who are subject to restrictions and restraints

in their lives, for example, not being free to leave or being under continual supervision and control.

A managing authority must seek authorisation from the correct supervisory body in order to lawfully deprive someone of their liberty, unless they are detained in hospital under the Mental Health Act (1983). Where a request for an Authorisation is made the supervisory body is responsible for conducting a prescribed set of assessments to determine whether the authorisation can be granted. This assessment of their circumstances determines whether the care provided is in their best interests to protect them from harm, whether it is proportionate and to determine if there is a less restrictive alternative. These safeguards prevent arbitrary decisions to deprive a person of their liberty and provide a robust and transparent framework in which to challenge deprivation of liberty authorisations.

DoLS do not apply to people living in supported living, or domiciliary care arrangements or those people who live in their own home. For these people an application to the Court of Protection will be required if the person's care amounts to deprivation of liberty. These cases are managed by the Council's Deprivation of Liberty in the Community (DoLIC) Team. The work of the DoLIC team is not within the scope of this policy.

#### **4. Relevant legislation and supporting policies**

The following legislation (and amendments) are relevant to DoLS

- [Care Act 2014](#)
- [Mental Capacity Act 2005 \(MCA\)](#). The Deprivation of Liberty Safeguards (DoLS) are part of the Mental Capacity Act but were included as an amendment through the Mental Health Act, 2007.
- [The Mental Capacity, \(Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence\) Regulations 2008](#) (effective from 3.11.08)
- [The Mental Capacity, \(Deprivation of Liberty: Appointment of Relevant Person's Representative\) Regulations 2008](#) (effective from 3.11.08);
- [The Mental Capacity, \(Deprivation of Liberty: Appointment of Relevant Person's Representative\) \(Amendment\) Regulations 2008](#) (effective from 3.11.08)
- [Mental Health Act 1983](#) and [2007](#)
- [The Equality Act 2010](#)
- [Human Rights Act 1998](#)
- [European Convention on Human Rights 1953](#)

All practitioners are required to ensure that they are aware of and act according to case law as it develops.

The following Nottinghamshire County Council policies, procedures and standards are also relevant to DoLS

- [Mental Capacity Act Policy and Procedure](#)

- [Nottingham and Nottinghamshire Multi-Agency Safeguarding Adults at Risk Guidance](#)

If a practitioner has any safeguarding concern, they should refer this to the Council's Multi Agency Safeguarding Hub (MASH). The MASH can be contacted by telephone (0300 500 80 90), email ([mash.safeguarding@nottsccl.gov.uk](mailto:mash.safeguarding@nottsccl.gov.uk)) and fax 01623 483295. [Online forms](#) also available.

If a practitioner has any concern regarding the quality of care a person is receiving, they should refer this to the Council's Quality and Market Management Team, who can be contacted via an [online form](#).

## **5. Roles and Responsibilities**

### **Nottinghamshire County Council (as the supervisory body)**

Nottinghamshire County Council is the supervisory body which will receive requests from managing authorities and is required to respond to requests for authorisations within the timescales defined within the legislation. Only Nottinghamshire County Council can authorise DoLS requests for a person who has ordinary residence in Nottinghamshire County Council's administrative boundary.

Nottinghamshire County Council will seek to employ and/or commission sufficient Best Interests Assessor and officer capacity sufficient to meet local needs to ensure completion of assessments and appropriate scrutiny of decisions made. The Council will also seek to ensure that there are sufficient accredited and trained medical practitioners (Section 12 doctors) to undertake mental health, eligibility and, where relevant, mental capacity assessments.

Nottinghamshire County Council will ensure there is a sufficient supply of Independent Mental Capacity Advocates (IMCAs) when they are needed in circumstances prescribed under the Mental Capacity Act, including where there are conditions as part of the DoLS authorisation. The Council will also ensure sufficient provision of advocacy services, such as paid relevant persons' representatives where they are required and according to local needs. See [Advocacy Guidance](#) and [Independent Mental Health Advocates \(staff guidance\)](#).

### **Managing Authorities**

Any managing authority in Nottinghamshire must apply to Nottinghamshire County Council for DoLS authorisations if they believe that a person in their care (aged 18 years or over) lacks capacity to give informed consent to their care arrangements and the care or treatment they provide to that person is likely to deprive the person of their liberty. Details of how to make a referral can be found on the [Council's website](#).

The Supreme Court judgment of 19 March 2014 in the case of *Cheshire West* clarified an "acid test" for what constitutes a "deprivation of liberty"<sup>2</sup>. The acid test states that an individual is deprived of their liberty for the purposes of Article

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<sup>2</sup> *P v Cheshire West and Chester Council and another and P and Q v Surrey County Council*,

5 of the European Convention on Human Rights if they<sup>3</sup>:

- Lack the capacity to consent to their care/ treatment arrangements
- Are under continuous supervision and control
- Are not free to leave

All three elements must be present for the acid test to be met. In all cases, the following are not relevant to the application of the test:

- the person's compliance or lack of objection;
- the relative normality of the placement (whatever the comparison made); and
- the reason or purpose behind a particular placement.

A managing authority is also required to consider developments in case law when making referrals to the supervisory body.

The supervisory body is responsible for monitoring standard authorisation conditions. When DoLS are granted and an authorisation is in place, the managing authority must comply with conditions of the authorisation specified by the supervisory body are followed. The BIA suggests conditions and makes recommendations as part of their assessment but it is the authoriser, on behalf of the supervisory body who sets the conditions. The supervisory body must be satisfied that during the period in which the authorisation is in place that any conditions set are being met by the managing authority.

If a DoLS authorisation is already in place, the managing authority should, before the authorisation period expires, refer the case to the supervisory body and request a further standard authorisation. This process is important because it enables the supervisory body to use the information submitted to risk assess the case and allocate resources accordingly. It is imperative that managing authorities work with the supervisory body to follow this process to minimise the risk of delay. Nottinghamshire County Council asks for no more than 28 days' notice for requesting a further standard authorisation, as this provides sufficient time to allocate, assess and complete such assessments within the statutory limit of 21 days from the receipt of a standard application, or, if sooner, the end of the current authorisation.

If the outcome of an assessment is that DoLS are not granted but the care and/or treatment the relevant person is receiving amounts to deprivation of liberty, the managing authority must immediately take steps to change the way in which the relevant person is being cared for so that the relevant person is not being deprived of their liberty. This may involve the managing authority liaising with the commissioners and, in the case of self-funders, the person who controls the funding of the person's care.

In respect of more complex required changes to the care plan, an urgent planning meeting should be arranged immediately at the request either of the managing

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[http://supremecourt.uk/decided-cases/docs/UKSC\\_2012\\_0068\\_Judgment.pdf](http://supremecourt.uk/decided-cases/docs/UKSC_2012_0068_Judgment.pdf)

<sup>3</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/485122/DH\\_Consolidated\\_Guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/485122/DH_Consolidated_Guidance.pdf)

authority or supervisory body or the commissioning organisation, to be chaired by the commissioning organisation. An unauthorised DoL may necessitate an adult safeguarding enquiry.

## **6. Recording Requirements.**

Nottinghamshire County Council has an online portal by which requests for a [Standard and Urgent Authorisation \(Form 1\)](#) and [Request for Further Standard Authorisation \(Form 2\)](#) can be made. All managing authorities in Nottinghamshire are required to use the online referral method wherever possible.

All correspondence sent by the Countywide DoLS team to managing authorities, relevant persons, interested persons and other professionals will be electronic (via secure email), except in circumstances where it is not practical to do so.

The Countywide DoLS Team will maintain records of applications and authorisations (given, and refused) on behalf of the supervisory body. The supervisory body is responsible for maintaining and submitting data. This will form the minimum data set for statutory reporting purposes. Records will be held on the Mosaic system.

The relevant person's records must include information about any formal reviews, including DoLS Part 8 Reviews that have been requested, when they were considered and the outcome. These records must be retained by the supervisory body. Records will be held on the Mosaic system.

## **7. Process Overview**

The vast majority of the DoLS process is prescribed within relevant legislation and the Code of Practice and must be followed as written. However, where legislation and the Code of Practice is not prescriptive, the Council utilises national guidance and best practice to shape its approach to providing this service. In doing so, the Council aims to meet its statutory responsibilities whilst ensuring that the processes followed make the best use of available technology, is devoid of any administration that is not absolutely necessary and minimises any possible distress to the person being assessed and their carers and families.

As the DoLS process is highly prescriptive, Nottinghamshire County Council uses a series of [forms](#) recommended by the Association of Directors of Adult Social Services (ADASS) Project Group to administer and facilitate its duties as the supervisory body. These forms have been specifically designed to navigate the process in a way that minimises bureaucracy and ensures that activity is focused on assessing the relevant person. Therefore, these forms will be used for all DoLS referrals and assessments, as well as the authorisation processes in Nottinghamshire<sup>4</sup>.

Due to the vast increase in demand for assessments since the Cheshire West case, ADASS have developed a tool in relation to risk assessing and prioritisation screening of referrals. The tool sets out the criteria most commonly applied which indicates that

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<sup>4</sup> <https://www.adass.org.uk/mental-health-drugs-and-alcohol/public-content/new-dols-forms>



an urgent response may be needed so as to safeguard the individuals concerned. The Countywide DoLS team uses this tool in balance with the legal criteria for the Deprivation of Liberty Safeguards which remains unchanged. The tool is used as an indicative guide only and each case is judged on its individual merits and continues to be based on the information supplied by the managing authority<sup>5</sup>.

Nottinghamshire County Council have also considered the Emergency Interim Guidance published by ADASS in June 2016<sup>6</sup>. The Council will use this guidance as necessary to manage the ongoing challenges presented by the impact of the Cheshire West judgement on demand for DoLS assessments. This includes the use of '[Form 3b](#)' both inclusive and exclusive of the Capacity Assessment<sup>7</sup>.

Nottinghamshire County Council has established an authorisation process for all DoLS assessments. The authorisation process, which scrutinises the assessments made, is conducted by managers within the Adult Social Care and Public Health Department (Signatories). All Signatories receive appropriate training and must access refresher training on an annual basis.

## **8. Resource Implications**

The resource implications of carrying out, administering and monitoring DoLS assessments are monitored by the Council's Adult Social Care and Public Health Department. The Council's DoLS Strategy sets out the Council's strategic approach to managing the DoLS process.

As a result of the Cheshire West judgement, a much greater number of people in residential care homes, nursing homes and hospitals now come under the scope of DoLS than previously and by law they must be assessed under the DoLS procedure. Therefore, ensuring resources are in place to meet this requirement has brought an unprecedented challenge to all Supervisory Bodies, and Best Interests Assessors (BIAs) continue to be in high demand and short supply, locally, regionally and nationally. In response to this, the Council endeavours to use all available resources to secure the required BIA capacity to meet demand in Nottinghamshire.

## **9. Training**

Nottinghamshire County Council will, as the supervisory body, commission a programme of training to ensure that there are sufficient staff accredited to carry out DoLS Assessments. The Council will ensure that annual refresher training is provided for BIAs and for other roles and functions within the DoLS process as necessary. Training commissioned by the Council in relation to DoLS will be regularly reviewed to ensure it remains fit for purpose.

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<sup>5</sup> <https://www.adass.org.uk/adass-priority-tool-for-deprivation-of-liberty-requests/>

<sup>6</sup> <https://www.adass.org.uk/media/5297/additional-dols-safeguards-final.pdf>

<sup>7</sup> Please note that the hyperlinked example 3b form does include the capacity assessment

## 10. Quality Standards

The quality standards within the policy are as follows:

As the supervisory body, the Council will at all times aim to complete all processes within the statutory timescales specified within the Legislation and Code of Practice. The DoLS Code of Practice and the MCA Code of Practice will be followed at all times in conjunction with this policy and the practice guidance, which will follow in due course.

As the supervisory body, the Council will, where required, prioritise allocation of resources according to a risk assessment of individual cases

As supervisory body, the Council will seek to authorise DoLS assessments within the statutory timescales specified within the legislation and Code of Practice. Colleagues who undertake this role within the DoLS process will receive the required training and support to ensure the proper process is followed.

As the supervisory body, the Council will use its DoLS Quality Assurance Framework to quality assure aspects of the DoLS process. This includes an audit process for assessments completed by employed and commissioned staff. The Quality Assurance Framework will also be used to seek feedback from relevant persons, carers and families to ensure that lessons learnt are sought as to how the Council's practice and approach to managing the DoLS process can be continuously improved.

## 11. Future Developments

Nottinghamshire County Council acknowledges the proposals for the review of the Mental Capacity Act and Deprivation of Liberty Safeguards made by the Law Commission, published in March 2017<sup>8</sup>. The report recommends the replacement of DoLS with an alternative scheme entitled Liberty Protection Safeguards. At the time of writing this policy, the Department of Health is considering its response to these proposals. A full response is due in spring 2018. The Council will consider amendment or replacement of this policy as required, should there be legislative change or updates to the Code Practice that occur as a result of the Law Commission's work or any other reforms considered by the Government in future.

## 12. Equality Impact Assessment

This policy could affect different groups of people in the following ways.

Group	Impact
Racial / ethnic groups	No differential impact
Religious / belief groups	No differential impact

<sup>8</sup> <https://www.lawcom.gov.uk/project/mental-capacity-and-deprivation-of-liberty/>

Disability groups	<p>It is probable that statements made within this policy will be more likely to be applicable to adults with a disability, as they are more likely to meet the 'acid test' for DoLS than people without a disability. For example, referrals relating to adults aged under 65 commonly concern people with one (or more) learning disabilities who lack capacity to consent to their care/ treatment.</p> <p>All requests for authorisation of DoLS assessments will be considered on an individual basis and will identify particular situations and the action to be taken specific to the individual.</p>
Sexual orientation groups	No differential impact
Age groups	<p>DoLS can only be considered for adults over the age of 18.</p> <p>It is probable that statements made within this policy will be more likely to be applicable to older adults (aged 65 and over).</p> <p>Adults within this age range are more likely to meet the 'acid test' for DoLS and to be subject of a DoLS referral. For example, although Dementia is not a consequence of growing old, the risk of having dementia increases with age. Most people who are affected by dementia are over 65; In 2014, of the estimated that 850,000 people who were living with dementia in the UK, 773,502 (91%) were aged 65 and over<sup>9</sup>.</p> <p>Approx. 70% of DoLS referrals the Council receives relate to adults aged 65 and over. All requests for authorisation of DoLS assessments will be considered on an individual basis and will identify particular situations and the action to be taken specific to the individual.</p>

<sup>9</sup> <https://www.ageuk.org.uk/information-advice/health-wellbeing/conditions-illnesses/dementia/>

### **13. Monitoring and Review**

The overall effectiveness of this policy will be monitored by the Senior Leadership Team within the Council's Adult Social Care and Health Department, with the support of operational managers responsible for the day to day operation of the Countywide DoLS Team.

The adherence of managing authorities to this policy will be monitored as part of Nottinghamshire County Council's quality and market management process, and may also be inspected by the Care Quality Commission.

Nottinghamshire Safeguarding Adults Board will also be a key stakeholder in promoting this policy.