Nottingham and Nottinghamshire Multi-agency Policy and Procedure on the Deprivation of Liberty Safeguards

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This joint Policy and Procedure was completed in August 2010 by members of the Nottinghamshire Mental Capacity Act Local Implementation Network following widespread consultation and involvement with health and social care agencies in Nottinghamshire. This policy will be reviewed in April 2012. It is a local guidance and whilst fully taking in to account Codes of Practice, Department of Health guidance and relevant case law up until September 2010, it does not replace these. Future case law may affect aspects of the guidance and each agency should remain up to date on case law developments.

Contents:

1. INTRODUCTION

The purpose of this policy and procedure is to inform health and social care professionals about the local operational arrangements for working with patients/residents in care homes and hospitals who have impaired mental capacity and are over the age of 18 years and for whom care or treatment is given in circumstances that might amount to deprivation of liberty. This policy and procedure applies to all health and social care staff and all agencies across Nottingham and Nottinghamshire involved in the care, treatment and support of people over the age of 18 who are unable to make all or some decisions for themselves. The policy and procedure should be used in conjunction with the **Nottingham and Nottinghamshire Multi Agency Policy and Procedure on the Mental Capacity Act 2005.**

Organisations and their staff are reminded that they have a formal duty of regard to both the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards Code of Practice (DOLS COP).

All organisations must support staff to take active responsibility for equipping themselves to practice within the law and in being able to explain how they have regard to the legislation and guidance in the DOLS COP when acting or making decisions on behalf of people who lack capacity to make decisions for themselves.

The Deprivation of Liberty Safeguards apply to:

DOLS COP 1.7-1.12

A relevant person *over the age of 18 years:*

- who *lacks capacity to consent to the arrangements for their care* ***and***
- *who has not been or should not be detained under the Mental Health Act 1983* (as amended) ***and***
- For whom deprivation of liberty is a *proportionate and necessary step to take in their best interests to keep them from harm.*

The procedures apply to hospitals, care homes and nursing homes. Those who fund their own care are entitled to the same safeguards.

The safeguards 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.

Although the Safeguards do not apply in a domestic setting, this does not mean that a local authority can disregard a situation that might amount to a deprivation of liberty in a family home, and where a local authority is aware of such a situation, there may be an obligation to intervene, for example to investigate, invest resources to prevent the deprivation, or to involve the court. It is not the purpose of this policy to deal with those situations, and practitioners should consider seeking appropriate legal advice if they are

concerned that there may be a deprivation of liberty occurring in a domestic setting, outside the protection of the Safeguards.

In addition to this policy and procedure, it is essential that managing authorities have their own internal procedures. There is a suggested template for this at the end of this policy and procedure. A separate copy can be obtained from the supervisory bodies as detailed in section 4.2 below.

1.1. Background to the legislation

DOLS COP Chapters 1 and 2

The Safeguards are the Government's response to the outcome of *HL v UK (2004)* known as the Bournewood case. The European Court of Human Rights ruled that Mr HL had been deprived of his liberty. In addition, as he was not detained in accordance with a procedure prescribed by law and was not able to take proceedings by which the lawfulness of his detention could be challenged, there was a breach of Article 5 (1) and 5 (4) of the European Convention of Human Rights. The Deprivation of Liberty Safeguards were introduced to ensure that those who lack capacity, and who may be cared for in circumstances that amount to deprivation of liberty, will have the protection of law which will comply with Article 5 (1) and 5 (4) of the European Convention of Human Rights.

DOLS COP 3.1

The safeguards require that a managing authority must apply for authorisation from a supervisory body in order to lawfully deprive a person of their liberty. Authorisation, if given, will only apply to the deprivation of liberty in that hospital or care home. It does not authorise the treatment or care which is regulated by the Mental Capacity Act 2005.

1.2. Definitions:

DOLS COP Key words and phrases – pages 114-120

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 their liberty.

A supervisory body is: A primary care trust which is responsible for commissioning the care of the relevant person or a local authority for the area in which the person is ordinarily resident. In Nottinghamshire the supervisory bodies are: NHS Nottingham City, NHS Nottinghamshire County, Bassetlaw PCT, Nottinghamshire County Adult Social Care & Health, Nottingham City Adult Support and Health.

A relevant person is: The person who is or who may be deprived of liberty and may be a patient in a hospital or a resident in a care home. Occasionally may be referred to as "P" in this policy and procedure (as in the Mental Capacity Act).

A 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 fro 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 senior management from the supervisory body who can authorise deprivation of liberty and who may attach conditions which have been recommended by the best interest's assessor.

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 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.

SAMCAT and the City DOLS Office: SAMCAT in Nottinghamshire County (Safeguarding Adults and Mental Capacity Act Team) and the City Deprivation of Liberty Safeguards Office in Nottingham City act administratively on behalf of the supervisory bodies in their area.

2. PREVENTION OF DEPRIVATION OF LIBERTY SITUATIONS

The best approach to dealing with a potential deprivation of liberty situation is *to try to prevent it happening in the first place.* This can be achieved by good care planning and close co-operation between the managing authority, relatives of the relevant person, and the commissioning agencies.

MCA COP 2.14 -2.16

Any managing authority that is caring for an adult who lacks capacity should attempt to provide care in a situation which involves the *least restrictive interventions*. This approach is in line with the 5th underpinning principle of the Mental Capacity Act 2005 (Section 1 of the Act).

A managing authority must have appropriately skilled staff who can produce effective care plans which seek to maximise the relevant person's opportunity for choice and devise care in the least restrictive way. The involvement of the relevant person's family, friends and carers will be crucial to this process. Contact with family friends and carers must be encouraged and maintained as much as possible unless there are concerns about the contact which must be thoroughly and openly assessed.

MCA COP Chapter 2

MCA COP 4.11 -4.25

It is vital that the relevant person's capacity to make decisions about his/her care arrangements is assessed. This is done in line with the Mental Capacity Act 2005 principles, and the two stage test of capacity must be completed. It is only if the person lacks capacity to consent to the arrangements for their care that the Deprivation of Liberty Safeguards become relevant. If the person has capacity, then the Safeguards are not relevant.

In the case of a person suffering from a mental disorder who has capacity, they may - if they meet the criteria for detention - be detained under the provisions of the Mental Health Act 1983 (as amended in 2007). See Section 17 below for circumstances when the Mental Health Act renders the person ineligible for the Deprivation of Liberty Safeguards.

A managing authority should encourage and facilitate the use of advocacy services. A patient or service user must have the benefit of regular care plan reviews which must consider the current circumstances, including the need for restraint.

The Mental Capacity Act Section 5 provides that a person shall not be liable for an act in connection with care or treatment, if it is reasonably believed that P lacks capacity, reasonable steps having been taken to ascertain this, and the act carried out is reasonably believed to be in P's best interests. Where restraint is required for an act under s5, it must also fulfil the requirements of

s6 – it must be necessary to prevent harm to P, and must be proportionate to the likelihood and seriousness of that harm. Section 4B makes further provision in relation to emergency and life-threatening circumstances, when acts may be permitted that would amount to a deprivation of liberty, while the matter is brought to the Court for resolution if need be.

Any restraint that is used under sections 4B, 5 and 6 must be reasonable and proportionate to the risk of harm to the person.

See CQC and SCIE guidance:

Restraint: How to move towards restraint free care -

http://www.cqc.org.uk/guidanceforprofessionals/socialcare/careproviders/guidance.cfm?widCall1=customWidgets.content_view_1&cit_id=2627

www.scie.org.uk/publications/ataglance/ataglance16.asp

However, where the restriction or restraint is ***frequent, cumulative and ongoing,*** then care providers should consider whether this has gone beyond permissible restraint, as defined in the Mental Capacity Act Section 6**.** Restriction of liberty may become deprivation of liberty. If this is unavoidable, the process of authorisation must begin.

3. IDENTIFICATION OF DEPRIVATION OF LIBERTY SITUATIONS.

DOLS COP Chapter 2 and 3.6

The most difficult task for a managing authority will be to identify circumstances where deprivation of liberty is occurring. The courts do not define deprivation of liberty.

The facts and the circumstances are likely to be different in each situation for the relevant person.

In its judgments, the European Court of Human Rights has identified the following factors as contributing to a finding of deprivation of liberty:

- **Restraint** was used, including sedation, to admit or treat a person who was resisting.
- Staff exercised **complete and effective control** over care and movement for a significant period.
- Staff exercised control over assessments, treatment, contacts and residence.
- A decision has been taken that the person would be **prevented from leaving** if they made a meaningful attempt to do so.
- A **request by carers** for the person to be **discharged** to their care was **refused.**

- The person was **unable to maintain social contacts** because of restrictions placed on access to other people.

- The person lost autonomy because they were **under continuous supervision and control.**

Note that the factors that may be relevant should be considered cumulatively, not in isolation, and account should be taken of their intensity, frequency and duration.

4. APPLICATION FOR AUTHORISATION BY THE MANAGING AUTHORITY.

DOLS COP 3.4

A managing authority must try to ensure that all possible steps have been taken to avoid a deprivation of liberty situation occurring. However, despite these steps being taken, if a managing authority has reason to believe that a patient or service user (The Relevant Person) is currently being or is likely within the next 28 days to be cared for in a situation that might amount to deprivation of liberty, it **must** request an authorisation from the relevant supervisory body.

That authorisation for planned admissions would be a standard authorisation, but occasionally the managing authority might need to grant itself an urgent authorisation when a deprivation of liberty has already taken place.

4.1. Referring to the supervisory body:

The managing authority must make reasonable efforts to send the completed application forms to the correct supervisory body. These must be faxed, by secure methods, by the identified person with authority to do so or sent by secure email or registered surface mail. In relation to urgent authorisations the supervisory body must be informed the same day or the next working day - see **Section 4.5** below.

4.2. Details of the supervisory bodies in Nottinghamshire County and Nottingham City Nottingham City.

In Nottingham City and Nottinghamshire County the supervisory bodies are located as follows:

NOTTINGHAMSHIRE ADULT SOCIAL CARE AND HEALTH / NHS NOTTINGHAMSHIRE COUNTY AND BASSETLAW PRIMARY CARE TRUST:

Deprivation of Liberty Senior Practitioners

Safeguarding Adults and Mental Capacity Act Team - SAMCAT
Chadburn House
Weighbridge road
Mansfield
Nottinghamshire
NG18 1AH

Phone: 01623 473218 Fax: 01623 607260

E-mail: dol@nottscc.gov.uk (referrals and general enquiries)

For Notification by a 3rd party of possible unauthorised deprivation of liberty:

Customer Service Centre 08449 808080

NOTTINGHAM CITY ADULT SUPPORT AND HEALTH/NHS NOTTINGHAM CITY:

Deprivation of Liberty Senior Practitioners

NOTTINGHAM CITY DOLS OFFICE:
Adult Support & Health
Harvey Court
Queens Medical Centre
Nottingham
NG7 2UH

Phone 0115 9249924 ext 62609 Fax 0115 8493227

E-mail: citydols.referrals@nottinghamcity.gcsx.gov.uk (referrals only)
citydols@nottinghamcity.gov.uk (general enquiries)

For Notification by a 3rd party of possible unauthorised deprivation of liberty:

Adult contact centre 0115 9155555

APPLICATIONS WILL BE TO SAMCAT OR CITY DOLS OFFICE AS PER THE FOLLOWING GUIDANCE:

Care homes for Nottinghamshire County Council/Nottingham City Council where:

- The relevant person is ordinarily resident within Nottinghamshire/Nottingham City or
- The relevant person is not ordinarily resident in England or Wales or
- The relevant person has no fixed abode or
- The relevant person is funding his or her own care
- In PCT commissioned placements this is the responsible commissioner PCT's home Local Authority.(Section 148 of the Health and Social Care Act 2008)

Hospitals where:

NHS Nottinghamshire County or Bassetlaw PCT/ NHS Nottingham City has:

- commissioned the relevant person's care or
- The hospital is within Nottinghamshire/Nottingham City and the relevant person has self-funded their care.

Out of area referrals

If SAMCAT or City DOLS Office receives a referral that is the responsibility of a supervisory body in another area, they will redirect the forms to the correct supervisory body and inform the managing authority.

Details of all other Supervisory Bodies may be obtained from SAMCAT and the City DOLS office and are on Department of Health website at:

http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards

SAMCAT or City DOLS Office liaises with other supervisory bodies when residents are out of area and beyond reasonable travel for best interests assessors. The basis for any negotiation will be:

Protocol for the Inter-Authority Management of Deprivation of Liberty Safeguards Applications
Up-dated: November 2009

This can also be obtained via the website for the Association of Directors of Social Services.

In the event of a dispute, this must be handled by the Secretary of State but in the meantime, the supervisory body which has received the request for authorisation must act in this role.

4.3. Standard authorisation

DOLS COP Chapters 3 and 4

A standard authorisation is given by the supervisory body (following the statutory assessments) and will enable the managing authority to deprive a person of their liberty for a specified time which may be *up to* twelve months (renewable).

The managing authority must apply for a standard authorisation using the **DOL FORM No 4**.

In care homes the applicant will be the registered manager or a person appointed by him/her to have responsibility for the application.

In hospitals, the applicant may be a doctor, senior manager or a nurse in charge of the ward or unit at the time that the authorisation needs to be sought**. Identification of such applicant should be in each NHS Trust's own procedures.**

4.3.1. Notification to others of application for standard authorisation

DOLS COP 3.15

The managing authority should tell the relevant person's family, friends and carers, and any Independent Mental Capacity Advocate (IMCA) already involved, that it has applied unless it is impractical or impossible to do so, or undesirable in terms of the interests of the relevant person's health and safety.

A copy of **DOL FORM 4** must be given by the supervisory body to the relevant person and to any IMCA who is appointed for the person. See section 11 below on IMCA.

The managing authority must keep clear written records of the request for authorisation and the reasons. This would normally include the original DOL Form if faxed to the supervisory body.

The CQC also requires notification at the point of application for a deprivation of liberty **and** also informed of the outcome see section 13.1 below.

4.4. Urgent authorisation

DOLS COP Chapter 6

An urgent authorisation is an authorisation by which the managing authority authorises itself to deprive a person of their liberty for **A MAXIMUM OF SEVEN DAYS**. This may be extended by the supervisory body for a further seven days in exceptional circumstances.

DOLS COP 6.1

An urgent authorisation is given where the managing authority believes that the need is so urgent that the deprivation of liberty must begin before a standard request is made, or it is so urgent that the deprivation of liberty needs to begin before the request is dealt with by the supervisory body.

4.5. Application for urgent authorisation

In care homes the applicant will be the registered manager or a person appointed by him to have responsibility for the application. **It is crucial for the managing authority to inform the supervisory body at once verbally and fax or e mail, by secure methods, the relevant forms the same day. If a fax is sent, the managing authority must check by telephone that the fax has arrived.**

In hospitals, the applicant may be a doctor, a senior manager or nurse at a senior level**. Identification of such applicant should be in each NHS Trust's own procedures.**

Urgent authorisation will be made on DOL FORM 1.

<u>NOTE:</u> The managing authority MUST also apply for a standard authorisation at the same time as granting itself the urgent authorisation. Standard authorisation will be made on DOL FORM 4.

4.6. Urgent placements from private hospitals and NHS providers including hospitals and hospices

DOLS COP 6.2

Urgent authorisations should only be used normally for sudden unforeseen needs or where the delay to another unit may reduce the benefit of the care at that unit.

If a place has been identified for the relevant person in, for example, a care home or rehabilitation unit, there should be a best interest's decision about whether the relevant person should be discharged there as soon as is practicable rather than remaining in hospital at that point for a DOLS authorisation assessment process. Consideration should also be given about the basis for the authority to convey there see section 16.

Upon admitting the relevant person, the managing authority should grant itself an urgent authorisation, and apply for a standard authorisation, if it appears that the person is potentially being deprived of their liberty.

4.7. Consultation with and notification to others of applications for urgent authorisation

DOLS COP 6.8- 613

Written records should be completed which demonstrate that proper steps have been taken to involve and consult with family, friends and carers, and that their views have been taken into account before the decision to give an urgent authorisation is taken.

A copy of **DOL FORM 1** must be given to the relevant person and to any IMCA who is appointed for the person. Friends, carers and family should also be notified about the urgent authorisation if at all possible and appropriate.

It should be noted that the relevant person has a right to apply to the Court of Protection for the urgent application to be terminated. The managing authority must explain to the relevant person that they have a right to apply to the Court. This must be done both orally and in writing.

There must be an original or a copy of the urgent authorisation in the person's records.

4.8. Notice of application to extend the urgent authorisation

The relevant person must be given notice in writing by the supervisory body that an extension to the urgent authorisation has been requested.

4.9. Time period of extension:

Only one extension to an urgent authorisation can be granted up to a further seven days. The supervisory body will only grant an extension if it appears to them that: the managing authority has requested a standard authorisation and there are exceptional reasons why it has not yet been possible for that request to be disposed of and it is essential for the existing detention to continue until the request is disposed of. **DOL FORM 3** will be completed by the supervisory body.

4.10. Recording application to extend urgent authorisation:

If the supervisory body does grant an extension, the details of this extension must be entered by the managing authority into **Part H of DOL FORM 1**. A copy of this amended DOL form must be given to the relevant person and to any IMCA who is acting for them.

4.11. The supervisory body response to receiving the request for standard authorisation – DOL FORM 4

The procedures in Nottingham and Nottinghamshire are:

- The receipt of authorisation application will be verbally acknowledged to the relevant managing authority within one working day (or the next working day if sent at weekend or bank holiday).
- If complete and valid, a best interests assessor will be allocated who should arrange to visit the care home or hospital within 1 working day for an urgent authorisation or 4 working days for a standard authorisation.
- If not complete and valid, or too far in advance (28 days), the DOL form will be returned for the managing authority to commence again.
- Timescales will commence from the date of receipt of the valid application.
- The supervisory body will alert the mental health assessor, but not request a visit at this stage – this will depend on the outcome of the best interests assessor's initial assessments.
- The supervisory body will instruct an IMCA, if required, before any assessments take place and within 2 working days of receipt of application, by completing **DOL FORM 30** and forwarding along with **DOL FORM 4** to the IMCA provider see section 11 below
- The best interests assessor will note requests for interpreters or other communication requirements. (Funding will be from within supervisory body commissioning budgets including, when required, for mental health assessors.)
- SAMCAT and CITY DOLS Office will also apply to the Office of the Public Guardian (OPG) for a final confirmation in relation to whether there is a registered Enduring or Lasting Power of Attorney, or whether a Deputy (financial or welfare) has been appointed, but the assessment cannot be delayed if response not within time limits. Note that the OPG does not have information on advance decisions to refuse treatment, pending LPA applications and deputy appointments, so the best interests assessor must not fully rely on the OPG's information in this respect.
- The best interests assessor will follow the assessment process as described see section 5 below.

The mental health assessor service for Nottingham and Nottinghamshire is provided by Nottinghamshire Healthcare NHS trust.

5. THE ASSESSMENT PROCESS

5.1. Appointing the assessors:

DOLS COP Chapter 4

The supervisory body will commission a best interests assessor and, if then required, a mental health assessor to conduct the six assessments. The supervisory body is responsible for appointing the assessors who will undertake the assessments relating to the application to deprive someone of their liberty. The managing authority will need to answer all reasonable questions asked by the assessors and make sure that the relevant person is available for the assessment visits.

The assessments for a standard authorisation must be carried out within a period of 21 days, which begins on the date that a Supervisory body receives a request for a standard authorisation. Assessments where there is an urgent authorisation must be completed before the urgent authorisation expires.

5.2. Best interests assessor initial visit:

The best interests assessor will:

DOLS COP 4.58 and 4.62-4.64

- **Carefully** consider the care and care plan and decide whether a deprivation of liberty is occurring or is going to occur

DOLS COP 4.23-4.24

- Complete the age assessment-DOL FORM 5 OR DOL FORM 10 (Section H)
- Identify any particular communication needs

DOLS COP 4.25- 4.28

- Complete No Refusals assessment – **DOL FORM 8.** Please note that SAMCAT and City DOLS Office will also check relevant elements in relation to this with the Office of the Public Guardian but the assessment cannot be delayed if response not within time limits – see 4.1 above.

DOLS COP 4.29 -4.32

- Conduct a full mental capacity assessment if, in first interview, it appears to the best interests assessor that the relevant person may lack capacity to decide whether or not they should be accommodated in the relevant care home or hospital to be given care or treatment –**DOL FORM 7.**

DOLS COP 4.40-4.57

- Eligibility assessment: If the best interests assessor is also an Approved Mental Health Professional, they can complete this assessment. If not, the mental health assessor who is also a Section 12 doctor must undertake it - **DOL FORM 9.** If possible, where there is prior knowledge that an application under the Mental Health Act is possible, assessment planning should minimise the number of interviews. Eligibility guidance in section 17 below must be consulted**.**

DOLS COP Chapter 7

- Ensure the IMCA is involved and liaise as appropriate

- Start to consider who would be an appropriate representative – see DOLS Code of Practice – Chapter 7.

- Ensure the relevant person, or someone acting on their behalf, is aware they can also apply to Court of Protection before a decision has been reached.

- Follow safeguarding procedures if concerns identified – section 14 below.

Note: if any requirement not met, the assessment process stops and the relevant person cannot be deprived of their liberty under a DOLS standard authorisation. The managing authority should be verbally informed at once with written confirmation in DOL FORM 13 arriving within 2 working days. The best interests assessor must notify the mental health assessor at any point that they are not required to carry out an assessment.

5.3. Completion of the assessment process:

The best interests assessor must inform the mental health assessor that the other assessments should proceed and both will arrange a visit within 4 days of the initial visit for standard authorisation requests. A judgment should be made by the best interests assessor, in liaison with the managing authority, as to whether a joint visit appears to be in the relevant person's best interests:

DOLS COP 4.33 – 4.39

- Mental health assessment - must be undertaken by the mental health assessor –**DOL FORM 6**
- Mental capacity assessment if not already completed – the best interests assessor undertakes this unless the mental health assessor knows the relevant person –**DOL FORM 7**
- Eligibility assessment if this has not already been completed –**DOL FORM 9.**

DOLS COP 4.58 – 4.76

- Best interests assessment – the best interests assessor should use the criteria in the Code of Practice and give clear evidence for decisions. Consultation with others is a most important aspect of this assessment and the managing authority should ensure there is full information to facilitate this. –**DOL FORM 10**

The best interest assessor should provide clear evidence for the decision that they reach. It is helpful to demonstrate how all the options have been considered within a framework of assessment of best interests –a "balance sheet" structure that is clear and comprehensible.

5.4. Equivalent assessments:

DOLS COP 4.4-4.8

There is guidance in the DOLS Code of Practice about equivalent assessments which can be used for DOLS a standard authorisation despite having been carries out for another purpose. These must:

- Be provided in a written copy

- Comply with all the requirements of a DOL assessment
- Have been carried out at last within the last 12 months
- Still remain accurate in the view of the supervisory body

and **DOL FORM 11** completed and signed by the supervisory body signatory.

In Nottingham and Nottinghamshire it is agreed that the guidance in the Code of Practice should be followed except for:

i) Equivalent assessments are not acceptable in relation to mental capacity for new applications for an authorisation, but may be appropriate when the above criteria have been met and there has been an immediate, preceding authorisation in place.

ii) Equivalent assessments are not acceptable for best interests assessments for any referrals.

The best interests assessor should discuss any proposed deviation from this with the supervisory body signatory.

5.5. Conditions

DOLS COP 4.74 – 4.76

The best interests assessor may recommend that conditions be attached to the deprivation of liberty authorisation. These should relate to the deprivation of liberty – and ensure that the DOL authorised is in the person best interests.

Ideally they should be:

- Focussed
- Easy to understand
- Not so detailed that they could not possibly be carried out or constrain the home in its response
- Not replicating the care plan

They can include a restriction , such as regulating outside visitors, if this means the deprivation of liberty is in the person's best interests (for their protection for instance).

It is essential that any such conditions are clear and practicable because they are not optional or aspirational, but are a condition of the authorisation. **If the conditions attached to any authorisation are not met, then the authorisation is not effective, and any ongoing deprivation of liberty may be unlawful.**

5.6. Assessment process for urgent authorisations:

The supervisory body initiates the same process as for standard authorisation request, but with different time scales as the authorisation commences at the point the managing authority grants itself the urgent authorisation. It is crucial

for the managing authority to inform the supervisory body at once and follow up by faxing **DOL FORM 4. Please not that faxes must always be followed up by a telephone call to ensure that the fax has arrived as noted in 4.5** above.

The best interests assessor should make contact with the managing authority within 1 working day of receipt of the referral to arrange the initial visit.

The mental health assessor should be informed straightaway after confirmation of application and should have 48 hours to complete any required assessments and send all relevant forms to the best interests assessor.

5.6.1. Expiry of the urgent authorisation:

DOLS COP 6.16- 6.19

Unless the managing authority requests an extension of the urgent authorisation, it terminates at the end of the 7 days for which it was issued.

It also terminates if the supervisory body grants or declines the standard authorisation request.

The supervisory body must inform the relevant person and any instructed IMCA of the termination, combined if relevant with the outcome of the standard authorisation.

5.6.2. Extending urgent authorisations

DOLS COP 6.20-6.28

The managing authority, in exceptional circumstances during the urgent authorisation, can request an extension on **DOL FORM 2.** The managing authority should seek the advice of the best interests assessor about what the exceptional reasons are, for example not having adequate time for a vital consultation because of a person not being available.

The supervisory body will forward the DOL form at once to the signatory manager who will need to carefully consider this, after discussion with the best interests assessor, and complete **DOL FORM 3**.

Where this is agreed, the managing authority must inform the relevant person and any IMCA about the extension.

6. THE AUTHORISATION PROCESS

6.1. Granting the authorisation:

The supervisory body will, if satisfied on the basis of the assessments that a deprivation of liberty is in the person's best interests, authorise the deprivation of liberty. **The supervisory body will not agree the authorisation if any one of the requirements is not fulfilled – age, best interests, eligibility, mental capacity, mental health, no refusals.**

Following recommendation by the best interests assessor, the authority to authorise deprivation of liberty will be given by the signatory which is the designated level of senior manager within the supervisory body.

6.2. Role of the signatory:

The allocated signatory has final responsibility for ensuring that proper process has been followed, the forms have been completed correctly and the evidence adequately supports and gives clear reasons for the decision.

The signatory:

- Cannot overturn the best interests assessor's decision
- Can suggest and discuss initiating a re-assessment when an assessment is incomplete
- Grants the authorisation where all requirements are met
- Grants extensions of urgent authorisations in exceptional circumstances
- Confirms the representative selected by the best interests assessor and becomes more directly involved if the choice leads to differences of opinion – see section 8.4 below

DOLS COP 4.74-4.76

- Considers the conditions the best interests assessor has set – and if concerned by any conditions, the signatory must discuss in person with the best interests assessor whether an adjustment of conditions could equally ensure that the deprivation of liberty was in the relevant person's best interests
- Sets the period of authorisation – can shorten but not lengthen the best interest assessor's recommendation in **DOL Form 10** and again, this should be discussed with the best interests assessor.

7. OUTCOME OF ASSESSMENTS

The best interests assessor has responsibility to inform verbally all those consulted and the managing authority of the outcome as there may be a brief delay before written confirmation is sent.

7.1. Authorised deprivation of liberty

If authorisation is to be granted, **DOL FORM 12** will be completed by the signatory. The supervisory body will indicate whether any conditions have been imposed and will detail those conditions in **DOL Form 12**. The managing authority has responsibility to:

- Comply fully with the authorisation

- In particular, comply fully and continually with any conditions that are imposed as part of the authorisation
- Facilitate and monitor levels of contact with the relevant person's representative
- Request a Part 8 review if circumstances change that affect the authorisation

DOLS COP 8.26-8.28

- Plan ahead for the end of the authorisation and, if appropriate, request another standard authorisation.
- Notify Care Quality Commission of outcome of authorisation see 7.2 below

Commissioners of the relevant person's care in local authority social care should review those on an authorised deprivation of liberty as considered appropriate by the relevant team manager. For instance, where there are complex conditions to meet within a short time line this may require allocation of a specific worker. Authorisations with less complex conditions could be subject to routine review. In healthcare, the PCT will expect the managing authority to fully manage the authorisation and seek a funding review if required for any additional care.

7.2 No deprivation of liberty

The best interests assessor may find that there is no deprivation of liberty. It may be that the present care plan is considered compliant with the Mental Capacity Act and that any restraints are proportionate and not amounting to a deprivation of liberty. Another possibility is that the best interests assessor may have made suggestions that are immediately acted upon by the managing authority so that the care regime is no longer considered to meet the criteria for deprivation of liberty. Such suggestions should be recorded in **FORMS 10 and 13.**

The managing authority should then keep the care plan under regular review to ensure that it does not amount to a deprivation of liberty in the future.

7.3. Unauthorised deprivation of liberty

DOLS COP 5.18-5.24

If the outcome of the assessments is that an deprivation of liberty is taking place which is not authorised under DOLS or by other lawful authority (such as Court Of Protection order or the Mental Health Act), it is essential for all concerned to respond immediately so that the position is urgently resolved.

7.3.1. Responding to the unauthorised deprivation of liberty

The managing authority must make immediate arrangements for alternative care based on the best interests assessor's recommendations in part E1 of **DOL FORM 10**. This may involve the managing authority liaising with the commissioners and, in the case of self funders, the person who controls the funds. In relation to healthcare cases, it would be senior manager with responsibility to act on behalf of the PCT as the supervisory body. **SAMCAT and City DOLS office should also send a copy of DOL Form 13, with**

copies of all completed assessments, to the organisation that commissioned the placement.

Where the required changes that would ensure there was no longer a deprivation of liberty are specific and straightforward to achieve, as outlined by the best interests assessor, the managing authority would amend the care plans at once and forward a copy of these along with DOL **FORM 13**, to the organisation that commissions the relevant person's care and the supervisory body.

In respect of more complex required changes to the care plan, an urgent planning meeting should be arranged i**mmediately at** the request either of the managing authority or supervisory body or the commissioning organisation.

It would be chaired by the senior commissioning manager in the local authority or the senior supervisory body manager in the PCTs. The meeting would include the best interests assessor, the managing authority senior representative, a representative from the commissioning service, any involved advocate, any professional involved with the relevant person and any fund manager if the relevant person is a self funder, and the relevant person if appropriate. The care plan should then be **immediately** amended, as agreed. Outcomes could include:

- a transfer of placement in some circumstances or
- an altered care regime at the same unit or care home that does not amount to a deprivation of liberty
- an altered care regime that may still amount to a deprivation of liberty but is likely to be assessed as in the person's best interests – an urgent authorisation should be made and accompanied by a request for a standard authorisation
- a continuation of the unauthorised deprivation of liberty either because the managing authority cannot or will not change the care regime. The chair of the meeting would consider all options including an urgent safeguarding referral. Legal advice must be sought.

Note that CQC should be informed by the managing authority, copying in the supervisory body, of any unauthorised deprivation of liberty.

After care plan changes have been agreed and recorded, these should be acted upon immediately. The senior manager of the local authority service which commissioned the care should confirm appropriate arrangements have been set up in their organisation for a review at no more than 4 weeks to ensure the new care plan arrangements are still preventing a deprivation of liberty. For hospitals the PCT may delegate this responsibility to a care manager from another agency or expect the managing authority to notify them of any problems in implementing the care plan

Responsibility for ensuring that there is no longer a deprivation of liberty, for implementing and for on going monitoring of the alternative care rests with the managing authority with support from others responsible for care including care managers, care co-ordinators and reviewing officers from commissioning teams in social care.

Self funders: The managing authority may have to negotiate an alternative care package or placement with the person who managers the funding. If this proves difficult, the managing authority should alert the Local Authority to a safeguarding situation.

7.3.2. Unauthorised deprivation of liberty in relation to specific requirements

Age – if less than 18, referral to the appropriate children's services should be made, if not already involved, or the Mental Health Act 1983 considered.

Eligibility – The guidance in relation about eligibility in section 17 below must be consulted.
If the person was considered as potentially requiring detention under the Mental Health Act 1983, this would be noted in Part E5 of DOL **Form 9** and a mental health act assessment must be arranged at once. The best interests assessor would refer at once to the relevant AMHP rota and confirm this by e mail to SAMCAT or Nottingham City DOLS office. It would be good practice for the same mental health assessor or best interests assessor who completed the eligibility assessment to be part of the Mental Health Act assessment.

An AMHP must always be involved in considering the referral.

If the mental health act assessment does not result in an application, this would mean that the 2 doctors and AMHP concerned did not agree with the mental health or best interests assessor who completed the eligibility assessment that the relevant person could be detained under the Mental Health Act.

In these circumstances, the managing authority and/or supervisory body may well remain concerned the relevant person could be deprived of their liberty, and would follow the steps in 7.3.1 above.

However, exceptionally, further information or different circumstances may be revealed during the Mental Health Act assessment that may potentially lead to a different outcome in another eligibility assessment. In this instance, the managing authority should grant itself an urgent authorisation and request a standard authorisation. If the relevant person is still not eligible, and remains deprived of his/her liberty, then steps in 7.3.1 should be taken.

8. THE RELEVANT PERSON'S REPRESENTATIVE

8.1. Appointment of relevant person's representative

DOLS COP Chapter 7

The relevant person's representative is appointed by the supervisory body.

This person will maintain contact with the relevant person and support them in matters relating to the safeguards. A representative can trigger a review, use the complaints procedures or make an application to the Court of Protection.

If the relevant person has the capacity to select their own representative, they should be enabled to do so. If the relevant person lacks the capacity to select their own representative, the best interests assessor will identify a person whom they would recommend to become the representative in accordance with the guidance in Chapter 7 in the Code of Practice. The process of selecting a representative must begin as soon as the best interests assessor is selected following the application for standard authorisation. The best interests assessor will record the selection process using **DOL FORM 24.**

8.2. Notification of the decision

The supervisory body completes and distributes **DOL FORM 25** to the parties specified in this DOL form but the best interests assessor should routinely verbally inform the person selected. The information leaflet at: http://www.dh.gov.uk/en/DH_094346 will also be forwarded to the representative by the supervisory body. In particular, they should be informed of their right to seek the support of an IMCA. The selected representative must confirm in writing that they are willing to accept the appointment and have understood their roles and responsibilities.

8.3. Role of the relevant person's representative

This is to:

- maintain contact with the relevant person
- to represent and support the relevant person in relation to the deprivation of liberty
- and, if appropriate, trigger a review, or use the organisation's, usually the managing authority's but occasionally the supervisory body's complaints procedure or apply to the Court of Protection.

The relevant person's representative does not necessarily have to support the deprivation of liberty

8.4. Professional representatives

If the best interests assessor is unable to recommend a suitable representative, the supervisory body must identify and appoint someone to undertake the role. That representative will normally be a friend or carer of the relevant person, but if no such person is available, the supervisory body will make an appointment of a professional representative.

8.5. Differences in opinion

There may occasionally be a difference in opinion with or between relatives and friends about who is the most appropriate representative. In these instances, the supervisory body's signatory manager, or the best interests assessor, depending on the complexity of the conflict, should make a best interests decision. The next step would be verbally inform those concerned and indicate the reasons for the decision. It may be necessary to meet with the parties if the matter is not resolved, using the supervisory body's complaints procedure. See section 12 below.

8.6. Gaps in representative:

If there are any gaps where there is no representative in place and there is no one to support the person, the managing authority must notify the supervisory body. The supervisory body must instruct an IMCA to represent the person until a new representative is appointed.

8.7. Responsibilities of the managing authority

The managing authority must facilitate visits by the representative to the relevant person at all reasonable times**.**

The managing authority must monitor the levels of face to face contact that the representative has with the relevant person. There are no guidelines specifically stating how often this contact should be, but if there are concerns about its quality or regularity, the managing authority should raise these with the representative in the first instance and attempts should be made to resolve any problems informally. If not resolved to the managing authority's satisfaction, then it must notify the supervisory body.

8.8. Termination of appointment of representative

The representative's role ends when: -

1) The standard authorisation ends if a new authorisation is not applied for or is not given.
2) The relevant person has informed the supervisory body that they no longer wish for the representative to continue in their role.
3) A donee of Lasting Power of Attorney or a Court appointed deputy has informed the supervisory body that he/she objects to the representative continuing in their role.
4) The supervisory body is not satisfied that the representative is maintaining sufficient contact with the relevant person, supporting them or acting in their best interests.
5) The supervisory body is satisfied that the representative is no longer willing, able or eligible to be the relevant person's representative.

Notice of impending termination

If a supervisory body has grounds for terminating the appointment of a representative, it must contact the representative and give them notice of pending termination using **DOL FORM 26.**

Once the appointment of the relevant person ends, the supervisory body will use **DOL FORM 27.**

If the appointment of the relevant person's representative ends, but lawful deprivation of liberty continues, the supervisory body must appoint someone else to act as the relevant person's representative as soon as is possible, taking account of the best interests assessor's recommendations.

9. REVIEW, SUSPENSION AND ENDING OF AUTHORISATION

9.1. Review of standard authorisation – Part 8 reviews

DOLS COP Chapter 8

Part 8 reviews are so described in this guidance to distinguish these from other routine care reviews, as they are subject to the provisions of Part 8 of Schedule A1 of the Mental Capacity Act 2005,

9.1.1. Requests for Part 8 reviews:

The supervisory body can carry out a Part 8 review at any time but must do so if requested to do so by an eligible person, Each of the following is an eligible person:

- the relevant person
- the relevant person's representative
- the managing authority

A managing authority may request a Part 8 review at any time but must request one if:

- one or more of the requirements is no longer met, or may not be met,
- there has been a change in the relevant person's situation and as a consequence it is necessary to amend, delete or add any conditions
- the reasons the relevant person met the requirements have changed since the time the standard authorisation was given.

The IMCA should support the relevant person to make use of the review process if appropriate and has the right to make submissions about having a review.

9.1.2. Procedures for Part 8 reviews:

If the managing authority is to request a Part 8 review, it will use **DOL FORM 19.**

The supervisory body may decide to carry out a Part 8 review even if there has been no direct request to carry out a review.

The supervisory body will give notice to the relevant person, their representative and the managing authority that a review is to be carried out using **DOL FORM 20.** The supervisory body will then consider whether any of the 6 qualifying requirements also need to be reviewed.

If it is possible that the relevant person no longer meets one or more qualifying requirements, the supervisory body must arrange for fresh assessments to be carried out for each qualifying requirement that needs review. The supervisory body will use **DOL FORM 21** to record this decision. The assessments should be completed on **FORMS 5, 6, 7, 8, 9, 10** (as appropriate).

9.1.3. Part 8 review outcomes:

If there are conditions which need changing, or reasons for authorisation have changed, the supervisory body must complete **DOL FORM 22,** circulating to the parties specified on the DOL form.

If the relevant person does not meet the qualifying requirements, then the standard authorisation must cease. Where a standard authorisation ceases to be in force, the supervisory body should record this using **DOL FORM 23,** circulating to the parties specified on the form.

9.2. Suspension of standard authorisation

DOLS COP 8.19-8.21

Where the relevant person is detained under the Mental Health Act 1983, the managing authority must notify the supervisory body. The supervisory body will suspend the authorisation. The managing authority completes **DOL FORM 14.**

If the relevant person becomes eligible for the safeguards again within 28 days, the managing authority completes **DOL FORM 15** to inform the supervisory body. The supervisory body will remove the suspension. If no such notice is given by the managing authority within 28 days, the authorisation will be terminated.

9.3. Termination of standard authorisation

DOLS COP Chapter 8

The managing authority should monitor the authorisation in order to see whether the relevant person's circumstances have changed in relation the deprivation of liberty. There is also a procedure if the person is about to move or has moved or died. See 9.4 below.

Managing authorities should note the date when the authorisation is due to cease, but will also be reminded of this by the supervisory body at least 20 working days in advance.

Paragraph 8.8 of the Code of Practice makes it clear that if the managing authority decides that a deprivation of liberty is no longer necessary then they must end it at once by adjusting the care plan or implementing whatever change is required. The managing authority would apply to the supervisory body to review as in section 9.1, using **DOL FORM 19** and, if appropriate,

formally terminate the authorisation. **The relevant person should never continue to be subject to the authorisation simply because it is due to end in the near future anyway.**

Managing authorities for hospitals should be aware that if the relevant person transfers from a hospital they manage to another hospital they manage then any authorisation must end and a new standard authorisation be applied for (and, if relevant, an urgent authorisation arranged).

If the managing authority does not respond within 10 working days before the end of the authorisation by either requesting a Part 8 review or a new authorisation, the supervisory body should remind the managing authority and urgently notify the commissioners of the relevant person's position. The commissioners should visit and review as soon as practicable, but within 5 working days at the most..

9.4. Process for termination of standard authorisation

Once the supervisory body has received **DOL FORM 19** (or decided itself that a review needs to be carried out), it must issue:

- **DOL FORM 20** notifying interested parties that a review is to be carried out and
- then issue **DOL FORM 21** if there is evidence that any requirement should be reviewed and
- then issue **DOL FORM 22** to outline its decision following review and
- if the outcome is a termination of the standard authorisation, issue **DOL FORM 23**.

9.5. Reasons for termination of standard authorisation

The following reasons are summarised from DOL FORM 23:

1. 28 days have now elapsed since notice was given by the managing authority that the relevant person had ceased to meet the eligibility requirement without the suspension having been lifted.

2. The standard authorisation has expired without it being replaced by a new standard authorisation.

3. A Part 8 review of the standard authorisation has been completed and the person no longer meets the requirements for being deprived of their liberty.

4. Following a change in the person's place of detention, the standard authorisation has been replaced by a new standard authorisation

5. The Court of Protection or another court has made an order that this standard authorisation is invalid or that it shall no longer have effect.

6. The person has died – see 9.6 below

7. Some other reason that would need to be described in section B7 of the form

9.6. Reporting deaths

These should be notified by the managing authority to the Care Quality Commission (CQC), as in section 13.1 below.

The death of the relevant person while deprived of liberty under the safeguards can reasonably be considered to be a death in custody/ state detention, and it is therefore prudent to treat any such death as reportable to the Coroner, such report to be made immediately by the managing authority, and confirmed by the supervisory body, in the absence of an explicit local agreement with a Coroner that this need not necessarily be the case.

The managing authority should also notify the following of any death in the duration of a deprivation of liberty authorisation and should confirm to the supervisory body that it has done so:

- The person's representative
- Any IMCA
- The supervisory body
- The Court of Protection / Official Solicitor (if involved)
- The Office of the Public Guardian (if there is or may be a donee of a Lasting Power of Attorney / Enduring Power of Attorney or a Deputy).

DOLS COP Chapter 9

10. IF SOMEONE THINKS SOMEONE IS BEING DEPRIVED OF THEIR LIBERTY – THIRD PARTY REQUEST PROCESSES

10.1. Third party requests to managing authorities:

Any concerned person (the third party) can notify the managing authority that they are concerned about someone being deprived of their liberty. The third party should write to the managing authority in the first instance. The managing authority should ensure that there is adequate information for all visitors about this.

The third party can be the relevant person's representative, any relative, friend or carer or any concerned person including inspectors and advocates. Standard letters, designed by the Department of Health, are available for this purpose – Letter 1 to write to the managing authority and Letter 2 to write to the supervisory body. The third party can either send both at the same time – or to one organisation initially. These letters are available from SAMCAT, Nottingham City DOLS Office or the Department of Health website.

NB Telephone numbers for SAMCAT and City DOLS office – see section 4.2 above.

Department of Health link to copies of **Letters 1 and 2**:

http://www.dh.gov.uk/en/Publicationsandstatistics/DH_103818

10.2. The managing authority's responsibility:

The managing authority must respond within 24 hours to the third party. The managing authority should attempt to resolve the matter through discussion with the third party: clarifying the care plan or changing the care plan so it does not amount to a deprivation of liberty where appropriate and if in the relevant person's best interests. If the issue cannot be resolved quickly, the managing authority must make a request for a standard authorisation (and grant itself an urgent authorisation if appropriate).

10.3. The supervisory body's responsibility:

If the third party has approached the managing authority, which has not responded to them, or if the third party disagrees with the outcome, they can ask the supervisory body to decide whether there is a deprivation of liberty. The supervisory body should record the request using **DOL FORM 16**, circulating to those specified on the form.

The supervisory body should also use this DOL form to record whether an assessment is required and whether or not the person is subject to an unauthorised deprivation of liberty. An assessment is not required if a request may be found to be frivolous or vexatious, or it may have been recently found that no deprivation of liberty is occurring, and there has been no change of circumstance. This is decided in the supervisory body at signatory level and legal advice may be required.

10.4. Direct third party referral to the supervisory body.

Whilst managing authorities should inform visitors about the rights of third parties, it is quite possible that members of the public may telephone the County or City Council customer lines – the Customer Services Centre or Adult Contact Centre - with a general concern. These would generally be regarded as an initial safeguarding contact and passed on to the relevant team manager who may then however decide it relates to a potential deprivation of liberty. The team manager should notify SAMCAT/City DOLS Office who will manage the following process on behalf of the supervisory body:

When the concerned third party has not approached the managing authority first, the supervisory body would generally arrange a preliminary assessment as to whether a deprivation of liberty is occurring and a best interests assessor should be appointed to assess this. The supervisory body should then request the managing authority to complete a standard authorisation request within a specified time –DOL FORM 4. If this time limit is not met, the supervisory body should follow the steps in 10.5 - 10.6 below.

The supervisory body can also inform the third party about how to approach the managing authority directly, providing them with a copy of the standard letter. In Nottinghamshire and Nottingham City, it will generally be the supervisory body who took the initiative, but if the third party then prefers

direct contact with the managing authority, the situation should be carefully monitored by the supervisory body.

10.5. Assessment process

If an assessment is required following a third party request then the supervisory body would indicate this on **DOL FORM 16.**

The supervisory body should appoint a best interests assessor to consider whether the person is deprived of their liberty and instruct an IMCA if the criteria are met for this. There should be thorough consultation and the assessment should be carried out within 7 calendar days and **DOL FORM 17** completed.

10.6. Assessment outcomes:

10.6.1. The outcomes

The supervisory body should complete **DOL FORM 18** and circulate it to all parties specified on that form. Outcomes could be:

- The person is not being deprived of their liberty.
- The person is being deprived of their liberty authorised by the Mental Capacity Act (an existing authorisation).
- The person is being deprived of their liberty authorised by the Mental Health Act or court order or other lawful authority.
- The person is being deprived of their liberty without authorisation or other lawful authority.

10.6.2. Unauthorised deprivation of liberty

If there is an unauthorised deprivation of liberty, the managing authority must apply for a standard authorisation –**DOL FORM 4** - combined with granting itself an urgent authorisation if appropriate –**DOL FORM 1.** The supervisory body would then arrange assessments and follow procedures as in Section 5 above.

The managing authority, with the support of commissioners, may take immediate measures to change the care plan so it does not constitute a deprivation of liberty. The best interests assessor should have given advice as to how this could be achieved. Refer to the steps in Section 7.3 above.

DOLS COP 7.37-7.41

11. INDEPENDENT MENTAL CAPACITY ADVOCATES (IMCA)

11.1. Section 39A IMCAs

As part of the best interests assessment, friends, family members or other representatives of the relevant person must be consulted to see whether they agree that the proposed care plan or course of treatment is in the best interests of the relevant person. If there is nobody to represent the relevant person, other than a professional or paid carer, the managing authority must

notify the supervisory body when it applies for deprivation of liberty authorisation. The supervisory body must then instruct a section 39A IMCA immediately to represent the person.

When a need for an IMCA is identified in a valid and complete **DOL Form 4** the supervisory body will complete and send **DOL Form 30** to Advocacy Partners Speaking Up.

The IMCA must then be consulted during the best interests assessment and provide support to the relevant person (acting on their behalf, where necessary) during the whole assessment process. IMCAs will need to:

- familiarise themselves with the relevant person's circumstances
- consider what information may be relevant to assessors during the assessment process
- Consider whether there are any concerns about the outcome of the assessment process.

11.2. Section 39C IMCA

Acting as an interim relevant person's representative:

A person who is being deprived of their liberty must have someone to represent their interests at all times. This is the role of the relevant person's representative usually a friend or family member, who should be consulted and informed about all matters relating to the care or treatment of the relevant person while the authorisation continues.

If the relevant person's representative has to give up their position for any reason, and a new relevant person's representative is not appointed immediately, the relevant person will be in a vulnerable position. In these situations, an IMCA must be instructed immediately to support the relevant person. In such circumstances, the managing authority must notify the supervisory body, who must instruct a section 39C IMCA to represent the person, temporarily, until a new representative is appointed.

Once notified by the managing authority, the supervisory body will complete and send **DOL Form 30** to IMCA provider.

11.3. Section 39D IMCA

Both the relevant person and their unpaid representative have a statutory right of access to an IMCA and must be told by the supervisory body:

- about the IMCA service
- how to request an IMCA and
- of their right to request support from an IMCA more than once during the period of the authorisation. (They might choose, for example, to ask for help at the start of the authorisation and then again later in order to request a review).

The supervisory body will write to the unpaid representative to ensure that they are aware of their rights when forwarding a copy of DOL Form 25. Upon receipt of any such request, the supervisory body will complete DOL Form 30 and send it to Advocacy Partners Speaking Up.

Where the relevant person has a paid 'professional' representative, the need for additional advocacy support should not arise and so there is no requirement for an IMCA to be provided.

11.4. 39D IMCA – other circumstances for instruction

If a supervisory body believes that the relevant person's rights may not be protected, and a Part 8 review and Court of Protection safeguards might not be used without the support of an IMCA, then they must instruct an IMCA. For example, if the supervisory body is aware that the person has selected an unpaid representative who needs support with communication, it should consider whether an IMCA is needed. The supervisory body may be made aware of this requirement by the best interests assessor at the commencement of the authorisation, or by the managing authority or any commissioning service in the local authority or PCT at any stage in the authorisation. The supervisory body should ensure that the IMCA is required in these circumstances and arrange for **DOL Form 30** to be completed and sent to Advocacy Partners Speaking Up.

11.5. Rights to information for IMCAs:

IMCAs have a right to certain information under the DOLS. The rights accorded to each IMCA depend on the circumstances under which they were instructed:

All health and social care staff need to be aware that IMCAs have statutory right of access to and copies of records that the record holder believes to be relevant to the decision. Clinicians and practitioners should be prepared to give access to files and notes <u>but only to those relevant to the decision</u> and in accordance with their agency policy in relation to access to records. Those responsible for patient / user records should ensure that third party information and other sensitive information not relevant to the decision at hand remains confidential.

The IMCA role is also entitled to:

- Copies of any assessments
- A copy of the standard authorisation from the supervisory body
- A copy of the urgent authorisation by the managing authority
  And:
- Apply to the Court of protection in relation to any issue relating to a standard or urgent authorisation.

For further information see Section 9 of the Department of Health leaflet:

Making Decisions – the Independent Mental Capacity Advocacy Service at:

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_095891

12. COMPLAINTS, DISPUTES AND COURT OF PROTECTION

12.1. Complaints:

Anyone who is in receipt of a service from health or social care services, or their representative, has a right to use the statutory Complaints Procedure 2009.

See:

http://www.dh.gov.uk/en/ContactUs/ComplaintProcedures/index.htm

Complaints may be made to the appropriate organisation and, if misdirected, with the consent of the individual concerned they will be passed to the relevant body.

Complaints may be about any aspect of the service provided including assessment processes, conduct of staff, dignity and respect. Complaints about decisions in respect of Deprivation of Liberty Safeguards can only be considered in relation to processes rather than the conclusion of the decision maker. Disagreements about the actual decisions made are addressed under **Disputes** – section 12.2 below

12.2. Disputes

The Court of Protection is the final arbiter in cases of dispute about whether there is a deprivation of liberty, whether the relevant person lacks capacity and, if so, what is in his best interests, and any other aspect of the Safeguards

12.3. Access to the Court of Protection

DOLS COP Chapter 10

The following people have an automatic right of access to the Court of Protection and do not have to obtain permission from the court to make an application:

- a person who lacks, or is alleged to lack, capacity in relation to a specific decision or action
- the donor of a Lasting Power of Attorney to whom an application relates, or their donee
- a deputy who has been appointed by the court to act for the person concerned
- a person named in an existing court order to which the application relates, and
- the person appointed by the supervisory body as the relevant person's representative.

Managing authorities should ensure that the relevant person and their representative are aware of this right. An IMCA should support the relevant person and/or their representative to access the Court of Protection.

DOL Form COP1 is used for application to the Court in these circumstances.

All other applicants must obtain the permission of the court before making an application. This can be done by completing **DOL Form COP2**.

Forms are available from http://www.publicguardian.gov.uk/forms/asking-the-court.htm

The relevant person, or someone acting on their behalf, can apply to the Court of Protection at any stage including before a decision has been made by the supervisory body.

Managing authorities and supervisory bodies should always seek legal advice if this course of action has been taken.

13. MONITORING AND GOVERNANCE

13.1. Care Quality Commission

HOSPITALS

From April 2010, NHS providers must inform CQC of any applications by a hospital to deprive a person of their liberty: either to a supervisory body or to the court of protection. They must also in inform CQC of the outcome. This must be through the statutory notification forms under regulation 18 of the CQC (Registration) Regulations 2009 regulation 18(2). Further advice and guidance can be found at:

www.carequalitycommission.org.uk/_db/_documents/RP_PoC1C_100504_20100305_v2_00_Rep_Notif_Events_G_NHS_bodies_FOR_PUBLICATION_EXTERNAL.pdf

Forms can be found at:

www.cqc.org.uk/guidanceforprofessionals/nhstrusts/registration/compliancemonitoring/providercomplianceassessmenttool.cfm

CARE HOMES

Care homes must also inform CQC of any applications by them to deprive a person of their liberty; either to a supervisory body or to the court of protection. They must also inform CQC of the outcome. This must be through a regulation 37 notification (The Care Homes Regulations 2001).

Further advice and information can be found at:

www.cqc.org.uk/guidanceforprofessionals/adultsocialcare/guidance.cfm?widCall1=customWidgets.content_view_1&cit_id=2525

Notification Form:

www.cqc.org.uk/_db/_documents/20090109_Person_Notification_Form_Care_Home__164-08_200911245503.doc

The Care Quality Commission has provided guidance on how it will monitor and report on deprivation of liberty safeguards activity and people's experiences of it, in **Guidance for CQC staff and providers of registered care and treatment services - The Mental Capacity Act deprivation of liberty safeguards** – published May 2009 and available at http://www.cqc.org.uk .

13.2. The Department of Health monitoring

The Department of Health requests quarterly monitoring information from the supervisory bodies. Details can be located at:

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/DH_110568

13.3. Other considerations:

The supervisory bodies and managing authorities must therefore keep their protocols and procedures under review and records up to date, and ensure there is full compliance with the guidance in this policy and procedure.

The Department of Health and supervisory bodies will use the monitoring information to pick up information about trends in authorisations so that future planning and commissioning can take this into account. This will also be used by contracting teams to review future service specifications with care homes and hospitals.

14. SAFEGUARDING

14.1. Local policies

There are close links between safeguarding adults and the deprivation of liberty safeguards. If abuse is suspected or witnessed, the multi agency safeguarding policy, procedure and practice guidance should be followed:

Nottinghamshire County Council Policy and Procedures at:
http://www.nottsadultprotection.org/ppg/
Nottingham City Council Policy and Procedures at:
http://www.nottinghamcity.gov.uk/safeguardingadults

The best interests assessor, as can all visiting staff, can act as an alerter at any point they witness or suspect abuse.

14.2. Guidance on the role of alerter

"Alerting occurs when a member of staff is informed, or has concerns, that abuse or neglect has occurred or is suspected." Details are in the policies

sign-posted above, which should be read, and from which the following paragraphs are copied:

"Staff who suspect abuse in other organisations:

1. There may be occasions when visiting staff witness or suspect abuse in another organisation (e.g. a district nurse visiting an independent nursing home). In such circumstances the visiting member of staff will be expected to act in the role of Alerter (as above), informing the Manager and the person responsible for Referring (unless 2 below applies). In addition to this you should inform your own line manager.

2. If you feel that you are not able to share information with the home manager, the person responsible for referring, or another manager within the organisation, as you believe that they are implicated or colluding with the alleged abuse you should contact the referral point and explain to the call taker that you wish to make a Safeguarding Adults Referral.

3. If you have concerns about an organisation not amounting to abuse or neglect as described in this document but related to the quality of care being provided you should, in the first instance, report this to the manager of the organisation and your own line manager.

4. This information should also be passed to the relevant body who commission services from this organisation (for example, local authority purchasing and contracting department) AND the regulatory body (CQC)."

Alerting may be necessary at any point, but examples are:

- At initial assessment, if the extent and /or type of restraint could be abuse
- If a deprivation of liberty is not authorised for any reason but continues
- If conditions are set to ensure a deprivation of liberty authorisation is in the person's best interests but the conditions are not met
- If there are concerns about potential abuse to other residents.

Those employed by the Local Authority will directly alert the relevant team; all others employed by the PCTs, Acute Care Trusts and all other organisations will alert the Customer Service Centre for the County (08449 808080) and the Adult Contact Centre (0115 9155555) for the City.

14.3. Involving the IMCA

If safeguarding procedures are commenced, appointing an IMCA should be carefully considered.

The relevant person's representative should be invited where the safeguarding issue relates to the deprivation of liberty and the relevant person's care at the care home or hospital.

14.4. Unauthorised deprivation of liberty

Any concerned person (a third party) can notify the managing authority that they are concerned about someone being deprived of their liberty – see section 10 above.

15. SECURITY OF INFORMATION

There will be a requirement for fast receipt and transmission of information in relation to DOLS but it is essential that person-identifiable information can be communicated safely, confidentially and securely between managing authorities and SAMCAT/City DOLS Office. Procedures have been developed in SAMCAT and City DOLS Office. , in line with agency policy, which covers:

- Safe haven Fax
- Appropriately registered surface mail
- Encryption protection in e mails.

Staff in other locations, including best interests assessors and signatories, in communicating with SAMCAT/CDO must work within those procedures when transferring information. They must also adhere to any agency policy, Caldicott principles and Data Protection Act principles including:

- Transferring the minimum of information necessary
- Ensuring information is on a need to know basis

16. CONVEYANCE

Conveyance may be a restriction on liberty and may require restraint, but this can be lawful under Mental Capacity Act 2005 Sections 5 and 6, subject to the limitations of those provisions.

DOLS COP 2.14

Conveyance is unlikely to be a deprivation of liberty but in some circumstances it might be.

An authorisation under DOLS can be given in anticipation of arrival at the specific care home / hospital, to take effect on arrival, but it cannot authorise conveyance to that place initially, which will have to be done under Mental Capacity Act 2005 Sections 5 and 6 as above if necessary (this has been supported in case law GJ v Foundation Trust 2009 and DCC v KH 2009).

An authorisation is specific to a particular care home/hospital and cannot authorise a deprivation of liberty at another location, or conveyance between them.

However, when a standard authorisation is in place, it implies that it is lawful for the managing authority to convey the P back to the place of residence (case law DCC V KH 2009 supports this point). However if this is likely to require a significant level of force or coercion, then it may be prudent to seek a view from the relevant person's representative and the supervisory body,

perhaps the Official Solicitor, and in an extreme case to consider an application to the Court of Protection.

Legal advice should be sought in those circumstances, and other options considered carefully, including detention under the Mental Health Act, guardianship, use of s135/136 of the Mental Health Act (power to convey to a place of safety), or a Court of Protection application.

There should be careful consideration of the most appropriate way to convey the person and who would support this, including family/friends and the ambulance service, and occasionally the police.

Please note that East Midlands Ambulance Service makes a standard charge for non urgent, pre-planned journeys.

17. THE MENTAL HEALTH ACT AND THE DEPRIVATION OF LIBERTY SAFEGUARDS.

The eligibility assessment will determine whether the person is ineligible for detention under the Safeguards, according to the provisions of **Schedule 1A** of the Mental Capacity Act 2005.

Case law GJ v Foundation Trust 2009 has clarified the following point in paragraph 58 of the judgment:

"It is not lawful for he medical practitioners referred to in [the Mental Health Act], decision makers under the Mental Capacity Act, treating doctors, social workers or anyone else to proceed on the basis that they can pick and choose between the two statutory regimes as they think fit having regard to general considerations (e.g. the preservation or promotion of a therapeutic relationship with P) that they consider render one regime preferable to the other."

If the person/patient is within the scope of the Mental Health Act, *"it is to have primacy when it applies."*

The purpose of DOLS was to create a procedural framework to protect people who lack capacity from arbitrary deprivation of liberty in the gap where the Mental Health Act does not apply, not to create an alternative system that could be used where the Mental Health Act does apply.

If a person could and should have been detained under the Mental Health Act prior to the advent of the DOLS, then this should still be the case, and DOLS should not be seen as creating an alternative.

The complex provisions that set out ineligibility are at Schedule 1A, and are best understood as providing, in broad terms, that if the Mental Health Act is already being used, or could be used, in a way that provides the person with procedural protection from any arbitrary deprivation of liberty, then the person will be ineligible for DOLS.

17.1. Ineligibility for detention under the Safeguards

DOLS COP 4.40-4.51

A relevant person is ineligible for detention under the safeguards if s/he is

1. A patient who is detained either in an independent or NHS hospital

The relevant sections of the Mental Health Act are:

Section 2 Application for admission for assessment
Section 4 Application for admission for assessment
Section 3 Application for admission for treatment
Section 35 Order for Remand to Hospital
Section 36 Order for Remand to Hospital
Section 37 Hospital order
Section 38 Interim Hospital order
Section 44 Order for Detention in Hospital
Section 45A Hospital Direction
Section 47 Transfer direction
Section 48 Transfer direction
Section 51 Hospital Order.

Note: decisions as to treatment for purely physical health needs must be taken in accordance with the Mental Capacity Act, if P lacks capacity, notwithstanding any detention under the Mental Health Act, since the MHA provides only for compulsory treatment without the person's consent where this is treatment for their mental disorder.

2. A patient on leave of absence or conditional discharge

A patient, who has been granted s 17 leave of absence, or s 42 / s 73 conditional discharge, will not be eligible for the Safeguards if there is a conflict between where the patient is required to live under the terms of leave or conditional discharge and the proposed deprivation of liberty authorisation.

The deprivation of liberty safeguards cannot be used as an alternative to patient recall under the Mental Health Act. The power of recall under the Mental Health Act must be used where this is for treatment of the mental disorder.

Note that if the patient required treatment in hospital for a *physical disorder* the Mental Health Act could not be used to authorise such treatment, and so the person could not be recalled under the MHA powers, and s/he would be therefore be eligible for the procedural protection of DOLS for any proposed or actual deprivation of liberty.

3 . A patient on a community treatment order

A patient who is subject to a s 17A community treatment order will not be eligible for the safeguards if there is a conflict between where the patient is required to live under the requirements of that order and the proposed deprivation of liberty authorisation.

The deprivation of liberty safeguards cannot be used as an alternative to patient recall under the Mental Health Act. The power of recall under the Mental Health Act must be used.

Note that if the patient required treatment in hospital for a *physical disorder* the Mental Health Act could not be used to authorise such treatment, and so the person could not be recalled under the MHA powers, and s/he would be therefore be eligible for the procedural protection of DOLS for any proposed or actual deprivation of liberty.

4. A patient subject to guardianship

A patient who is subject to s 7 guardianship application or a s 37 guardianship order will not be eligible for the safeguards if the proposed course of action is not in accordance with a requirement imposed by the guardianship, such as a requirement to live in a particular place.

A patient who is subject to a s 7 guardianship application or a s 37 guardianship order will not be eligible for the safeguards if the standard authorisation would authorise detention in a mental hospital for the purposes of medical treatment for a mental disorder and *the patient objects* and no valid consent has been given by a donee of lasting power of attorney or a deputy.

17.2. Other patients who are not eligible - who are within the scope of the Mental Health Act

Shedule1A MC Act Paragraphs 2E d 5 DOLS COP 4.45 – 4.49

Finally, there is the most complicated situation - where a person is not already under a Mental Health Act regime, as above, but s/he is "within the scope" of the Mental Health Act, so that it could (and therefore, in theory, should) be used to give the procedural protection required for any deprivation of liberty, and therefore s/he is ineligible for DOLS.

"Within the scope" of the Mental Health Act means that (in the opinion of the DOLS eligibility assessor) an application could be made to detain P under s 2 or s3 of the Mental Heath Act, and if such an application were made, P could be detained in a hospital for treatment of a mental disorder, and P objects (and no valid donee / deputy consents to those issues on P's behalf).

If any of these criteria are not fulfilled, then the Mental Health Act could not be used to provide P with the appropriate procedural protection from arbitrary deprivation of liberty, and so s/he would be eligible for DOLS.

For example, if the needs that gave rise to the care plan that would constitute a deprivation of liberty were essentially for physical health needs, then the Mental Health Act could not be used to detain P compulsorily, as it only provides for detention for treatment of a mental disorder.

Note that a person with a learning disability cannot be treated under section 3 of the Mental Health Act unless they display abnormally aggressive or seriously irresponsible behaviour. If they cannot be treated under the Mental Health Act, they will be eligible for DOLS.

Note that an appropriately appointed donee or deputy can consent to the treatment to which the relevant person objects. This would have the effect of being treatment / care with consent, and so would take P outside of both the Mental Capacity Act and DOLS.

18. EQUALITY IMPACT ASSESSMENT FOR THIS POLICY

This is a Nottingham and Nottinghamshire multi agency policy. Each agency is responsible for completing its own Equality Impact assessment.

19. APPENDIX: TEMPLATE DOL POLICY FOR MANAGING AUTHORITIES

This template can be obtained in a separate document from the supervisory bodies as outlined in 4.2 above.

Template DOL Policy for Managing Authorities

1. Name of managing authority and/or organisation:

2. Name of manager/lead responsible for developing and reviewing this policy:

3. Date to review the policy:

4. Introduction:

Staff should have access to and a formal legal duty to have regard to both the **Mental Capacity Act and the Deprivation of Liberty codes of practice.** Staff should also have access to the **Nottingham and Nottinghamshire multi-agency policy and procedure on the Deprivation of Liberty Safeguards.**

Hard copies of the codes and multi agency policy and procedure can be found:

Indicate where these are in your organisation:

Copies on the internet can be found at:

Mental Capacity Code of Practice (2007)
http://www.dca.gov.uk/legal-policy/mental-capacity/mca-cp.pdf

Deprivation of Liberty Code of Practice (2009)
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085476

This policy provides additional practice and procedural guidance to staff in …….. ……(name of organisation)

5. The responsibilities of the managing authority:

We will ensure that:

All staff have knowledge of the DOLS code of practice and of their responsibilities. This will be developed through our training strategy to develop staff skills according to their level of responsibility.

The person responsible for ensuring staff are trained in an awareness of the use of restraint and restriction and the possibility of DOL in this organisation is:

Role of person responsible and deputy in their absence:

6. Prevention of the Deprivation of Liberty:

The best approach to dealing with a potential deprivation of liberty situation is **to try to prevent it happening in the first place.** If staff are concerned that someone may be deprived of their liberty, the following are the first steps to consider:

- It is vital that the relevant person's capacity to make decisions about his/her accommodation arrangements is assessed. This is done in line with the Mental Capacity Act 2005 principles and the two stage test of capacity is a vital part of that process.
- If the person has capacity in relation to their accommodation, then the DOL Safeguards are not relevant. People with capacity can make their own decisions and must be listened to and involved.
- Effective care plans need to be formulated which seek to maximise the relevant person's opportunity for choice and devise care in the least restrictive way.
- The involvement/consultation of the relevant person's family, friends and carers will be crucial to this process. Contact with family, friends and carers must be encouraged and maintained as much as it is possible to do so, subject to any safeguarding concerns.
- All care and treatment should be provided in line with the MCA Sections 5 and 6
- It is vital that an appropriate restraint and restriction policy is in place.
- A review meeting may be needed to evidence and clarify why restraints and restrictions are needed and under what circumstances.

See the Deprivation of Liberty Code of Practice point 2.7 Practical steps to reduce risk of a Deprivation of liberty occurring
Some restraints and restrictions may be appropriate to use under the Mental Capacity Act if it is used to protect the person from harm and is a proportionate response to the likelihood or seriousness of that harm.

The Mental Capacity Act code of practice states a person can have restraints and restrictions in place providing the following two conditions are met:

- the person taking the action must reasonably believe that restraint is necessary to prevent harm to the person who lacks capacity and
- the amount or type of restraint used and the amount of time it lasts must be a proportionate response to the likelihood and the seriousness of harm.

See the Mental Capacity Act sections 5 and 6 and Mental Capacity Act guidance 6.39-6.53

Further information on the use of restraint is available from the multi agency DOLS policy.

When the restriction or restraint is frequent, cumulative and ongoing, then staff should consider whether this has gone beyond permissible restraint, as defined in the Mental Capacity Act. If this is the case, the process of authorisation must begin. If in doubt, apply to the supervisory body and consider an urgent authorisation. Section 5(6) Mental Capacity Act confirms there is no protection under the Act for actions that result in someone being deprived of their liberty, (other than under s4B, for emergency life-threatening situations).

7. Identifying deprivation of liberty:

All staff have a responsibility to identify people who may be or are deprived of their liberty. Deprivation of Liberty will always be considered as part of the assessment upon admission process and when reviewing the use of restraint being used with individuals.

The person(s) responsible for considering DOL at admission and responding to staff identification of a potential DOL in this organisation is/are:

Role of person responsible and deputy in their absence:

Reference to the Mental Capacity Act and Deprivation of Liberty Code of Practice is essential. Chapter 2 of the Deprivation of Liberty Code of Practice contains a discussion of the relevant case law and a guide as to what might amount to deprivation of liberty in any given situation – in particular paragraphs 2.5 and 2.6 .

8. Applying for authorisations

Despite steps being taken to avoid deprivation of liberty, if it is believed that the relevant person is currently being or is likely (within the next 28 days) to be cared for in a situation that might amount to deprivation of liberty, an authorisation must be applied for. When assessing people being referred for accommodation, there should always be questions about whether they may be deprived of their liberty.

The process is to apply for a standard authorisation to the relevant supervisory body, **but an urgent authorisation will be required when a deprivation of liberty is already taking place.**

Signatures for urgent authorisation/application for a standard authorization:

The person(s) responsible for this is/are:

Please identify who this is in your organization:

In care homes, the applicant will be the manager or a person appointed in their absence.
In hospitals, the applicant will be an identified senior member of staff.

Forms can be located at:

The Department of Health website. Do not print out or photocopy forms to use as they may be changed periodically. Therefore, it is essential to use the website to access forms. They are available from:
www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_103874

Please ensure that you download the forms in black and white for faxing.

See the "Nottingham and Nottinghamshire Multi-Agency Policy and Procedure on the Deprivation of Liberty Safeguards" for more detailed information about which forms to use and how to decide which supervisory body to send the forms to. Guidance can be obtained from**:**

Nottinghamshire Adult Social Care and Health/ NHS Nottinghamshire County and Bassetlaw Primary Care Trust:
Safeguarding Adults Mental Capacity Act Team (SAMCAT):
Chadburn House
Weybridge road
Mansfield
Nottinghamshire
NG18 1AH
Phone: 01623 473218 Fax: 01623 607260 e mail dol@nottscc.gov.uk

Nottingham City Adult Support Housing and Health/ NHS Nottingham City:
NOTTINGHAM CITY DOLS OFFICE:
Adult Support & Health
Harvey Court
Queens Medical Centre
Nottingham
NG7 2UH
Phone 0115 9249924 ext 62722 Fax 0115 8493227
e-mail: citydols.referrals@nottinghamcity.gov.uk (referrals only)
citydols@nottinghamcity.gov.uk (general enquiries)
When faxing documents, telephone to ensure that the fax has arrived.

9. DOLS assessments and authorisation

DOLS assessment:

Assessment processes are in the Nottingham and Nottinghamshire Multi-Agency Policy and Procedure on the Deprivation of Liberty Safeguards".
Staff on duty will ensure that the Best Interests Assessor and the Mental Health Assessor have **access to records** they consider relevant to their assessment.

Assessors may need to speak to a number of staff within the service and of various grades depending on their knowledge of the person

Authorisation granted with conditions

Managing authorities must comply fully with any conditions that are imposed, as part of the authorisation. It may be necessary to arrange a meeting with the Local Authority or PCT that commissions that person's care if the conditions involve extra funding requirements. If a self- funder, a meeting with the person who manages the relevant person's funds must be held and if funding is refused, and therefore conditions cannot be met, the supervisory body must be informed as the deprivation of liberty may not be in the person's best interests and potentially also, a safeguarding referral considered.

The person responsible for monitoring that this managing authority is meeting the conditions of the authorisation is:

Role of person responsible and deputy in their absence:

Authorisation not granted:

If authorisation is **NOT** granted, DOL Form 13 will be completed by the Supervisory Body. **If authorisation is not granted, but the person is being deprived of their liberty, the care plan must be urgently amended in liaison with the supervisory body and in social care, the funding/commissioning authority: there is guidance about this in the Nottingham and Nottinghamshire Multi-Agency Policy and Procedure on the Deprivation of Liberty Safeguards**.
The person in the managing authority responsible for liaising and planning in relation to an unauthorised deprivation of liberty is:

Role of person responsible and deputy in their absence:

10. Information for relevant persons and their family

Staff must take all reasonable steps to ensure relevant person or representative understands what authorisation means and how they can apply to the Court Of Protection. This should be included in any written information provided and on relevant posters. This can be obtained as follows:

Easy read booklet for people made subject to the process
www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_097320

Mental Capacity Act 2005 Deprivation of Liberty Safeguards: A guide for family, friends and unpaid carers
www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_095895

Deprivation of Liberty Safeguards: A guide for relevant person's representatives
www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_094346

The person in the managing authority responsible for ensuring that information is given to relevant person or representative is:

Role of person responsible and deputy in their absence:

11. Monitoring the representative

The relevant person's representative is appointed by the supervisory body. This person will maintain contact with the relevant person and support them in matters relating to the Safeguards.

- The representative can trigger a review, use the complaints procedures or make an application to the Court of Protection.
- If there are any gaps where there is no representative in place and there is no one to support the person, this organisation must notify the supervisory body which would appoint an IMCA
- The supervisory body will send out a letter of appointment. It will set out the roles and responsibilities, stating the name of the representative and the date of expiry of the appointment. This is the same as the period for which authorisation has been given. A copy will be given to the managing authority and this must be filed in the person's file.

The managing authority must:

- facilitate visits by the representative to the relevant person at all reasonable times.
- monitor the levels of contact that the representative has with the relevant person. You can do this on the representatives tracking sheet - at end of template.
- clarify the representative's contact with the relevant person e.g. the managing authority may want to agree appropriate levels of contact to ensure that this is supported.
- identify and raise any concerns with the representative in the first instance and attempts should be made to resolve any problems informally.
- contact the supervisory body should the representative still not maintain appropriate levels of contact.

The person responsible in the managing authority for monitoring this is:

Role of person responsible and deputy in their absence:

12. IMCA

An IMCA can be instructed in relation to deprivation of liberty. Managing authorities will be asked to provide information about this possibility at the point of referral and this must be completed.

IMCAs have statutory right of access to and copying of records that the record holder believes to be relevant to the decision. Staff should be

prepared to give access to files and notes but only information relevant to the decision. Third party information and other sensitive information not relevant to the decision at hand remains confidential

The Independent Mental Capacity Advocacy Service in Nottinghamshire:

'Speaking Up':
3A First Avenue
Sherwood Rise
Nottingham
NG7 6JL

The national hot line for information and referrals. **0845 650 0081**

13. Review and ending authorisations

Review of standard authorisation

Staff should monitor individual's circumstances, as any change may require you to request a review from the supervisory body. These are different to a routine review of care and could include that the person is no longer deprived of their liberty or that one of the assessments may no longer apply.

Ending of standard authorisation

Staff members must also keep the situation monitored in relation to the length of the authorisations and when to apply for another standard authorisation.

The person in the managing authority responsible for monitoring for reviews and authorisations is:

Role of person responsible and deputy in their absence:

If the person dies, this is regarded as a death in custody and should be notified – see
Nottingham and Nottinghamshire Multi-Agency Policy and Procedure on the Deprivation of Liberty Safeguards"
If the person is to be relocated, you should give as much notice as possible to the SAMCAT or City DOLs office, the receiving managing authority and the CQC (See the "Nottingham and Nottinghamshire Multi-Agency Policy and Procedure on the Deprivation of Liberty Safeguards" for more detailed information). Please note that a deprivation of liberty would not apply to the next accommodation and that managing authority should make an application for a standard authorisation if appropriate.

14. Third party requests concerning potential unauthorized deprivations of liberty

If someone indicates that a person in care is deprived of their liberty in a care home or hospital setting, staff must respond to this within 24 hours.

The person in the managing authority responsible for monitoring this and ensuring visitors are aware of this, through posters and leaflets, is:

Role of person responsible and deputy in their absence:

15. Recording and Governance

HOSPITALS
From April 2010, NHS providers must inform the CQC of any applications by a hospital to deprive a person of their liberty: either to a supervisory body or to the court of protection. They must also inform the CQC of the outcome. This must be through the statutory notification forms under regulation 18.

CARE HOMES
Care homes must also inform the CQC of any applications by them to deprive a person of their liberty; either to a supervisory body or to the court of protection. They must also inform the CQC of the outcome. This must be through a regulation 37 notification.

It is important to maintain detailed current records and to evaluate procedures, referral rates and authorisations

This evaluation will be done on a …… ***(insert timescale here)*** basis.
The person responsible for monitoring this is:

Role of person responsible and deputy in their absence:

Deprivation of Liberty Safeguards **Representative Tracking form for care homes and hospitals**

DOL Code of Practice pg 77, points 7.4 and 7.5 states the managing authority must seek to ensure that the relevant person and their relative understand the following:

Record of Information giving:

	Date completed	Staff member Sign and print	Representative sign and print
The effects of the authorisation			
Their right to request a review			
The formal and informal complaints procedures which are available to them			
Their right to make an application to the Court of Protection to seek variation or termination of the authorisation			
Their right where the relevant person does not have a paid professional representative, to request the support of an Independent Mental Capacity Advocate (IMCA)			
The managing authority must take account of communication and language needs of both the person and their representative.			
The managing authority should provide on going information to the person and their representative.			

"A managing authority should monitor whether the relevant person's representative maintains regular contact with the person" page 104 DOLS COP. This should be face to face contact (7.25 DOLS COP). Whilst this is discretionary and a managing authority judgement, the only guidance would be that paid representatives would be expected to have a minimum of one hour per month

Record of representative's contact with the relevant person:

Date (s) By month	Duration of each visit	Staff witnessed	Representative signature
