Mental Capacity Act 2005

Deprivation of Liberty Safeguards

Policy & Procedures

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This is a joint guidance document for staff in Richmond upon Thames working in:
- Richmond Council, Adults and Communities
- Richmond Clinical Commissioning Group (CCG).
- Care Homes registered under the Health & Social Care Act 2008
- Acute & Community Hospitals – including Hospices, except Hospice at Home
- South West London & St Georges Mental Health Trust

This policy places explicit responsibilities on all key partner agencies. All partners agree to work in accordance with this policy and are committed to continually developing good practice and monitoring standards.

This guidance document is also for staff working within these professional roles outside Richmond upon Thames, where the customer or patient (who lacks the capacity to consent to care or treatment in circumstances that might be considered a “deprivation of liberty”) is likely to be placed in - or returning to - Richmond upon Thames.

This document provides guidance about the Deprivation of Liberty Safeguards, and how these safeguards link into the Mental Capacity Act 2005. It provides information about the specific roles in these processes, their incumbent responsibilities and how they should be applied. It also links in to the Deprivation of Liberty Safeguards Code of Practice which can be downloaded from the Department of Health website: www.dh.gov.uk/en/publications.

To ensure consistency the term “relevant person” is used throughout this guidance document wherever possible, as a term of reference for either the customer or patient. In addition the term “Managing Authority” is used wherever possible to refer to a Care Home or Hospital and “Supervisory Body” is used wherever possible to refer to the Local Authority (Richmond upon Thames Council) or the appropriate Primary Care Trust (NHS Richmond and Twickenham Primary Care Trust).

1. Introduction

The principle of all service provision is to meet a person’s needs and aspirations in the least restrictive way, enabling people to retain as much control, choice and self determination as possible over the way in which they wish to lead their lives.
Some people lack the capacity to consent to particular types of treatment or care that others have assessed as being in their best interests. The Mental Capacity Act 2005 provides a framework for acting and making decisions for these individuals.

Sometimes a decision made in a person’s best interests can mean they are at risk of being deprived of their liberty and it is important to recognise where this is happening or has the potential to occur.

Due consideration should always be given to the least restrictive options for providing care. Where restrictions of liberty are unavoidable, professionals and others making decisions on what is in the best interests of the person must be clear and sure of the benefits the individual will gain from the care and treatment proposed. These benefits must be significantly greater than other treatment and care delivered in an alternative, less restrictive way or setting.

### 1.1 The Mental Capacity Act

The Deprivation of Liberty Safeguards (DoLS) are in addition to - but do not replace - other safeguards in the Mental Capacity Act 2005. This means that decisions made and actions taken, for a person who is subject to a deprivation of liberty authorisation, must fulfil the requirements of the Act in the same way as for any other person.

Any action taken under the Deprivation of Liberty Safeguards must be in line with the principles of the Act, which are:

a) A person must be assumed to have capacity to make a decision unless it is established that they lack the capacity to make that decision.

b) A person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success.

c) A person is not to be treated as unable to make a decision merely because they make an unwise decision.

d) An act done or decision made under the Act, for or on behalf of a person who lacks capacity, must be done or made in their best interests.

e) Before the act is done or the decision is made, regard must be given to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person’s rights and freedom of action.

For further practitioner guidance on mental capacity and best interest decision making please refer to the Mental Capacity Act and Deprivation of Liberty Code of Practice.

### 1.2 An Overview of the Deprivation of Liberty Safeguards
The Deprivation of Liberty Safeguards provide legal protection for those vulnerable people who are, or may become, deprived of their liberty within the meaning of Article 5 of the European Court of Human Rights (ECHR) in a Hospital or Care Home, whether placed under public or private arrangements. The safeguards exist to provide a proper legal process and suitable protection in those circumstances where, in a person’s own best interests, deprivation of liberty appears to be unavoidable.2

The safeguards relate only to people aged 18 and over. If it appears that a person under the age of 18 may be deprived of their liberty then other safeguards must be considered, such as the existing powers of the court, particularly those under section 25 of the Children Act 1989, or use of the Mental Health Act 1983.

The Deprivation of Liberty Safeguards are solely about ensuring that there are appropriate safeguards in place when it is deemed that a person, who lacks the capacity to decide the matter for themselves, needs to receive care or treatment, in their best interests, in a hospital or care home, in circumstances that deprive them of their liberty.

The safeguards do not:
- introduce a new system for determining whether a person, who lacks capacity to decide the matter for themselves, should receive care or treatment;
- provide any new power to take and convey people to Hospitals or Care Homes;
- apply to people detained under the Mental Health Act 1983.

Every effort should be made, in both commissioning and providing care or treatment, to prevent deprivation of liberty. If deprivation of liberty cannot be avoided, it should be for no longer than is necessary.

People who suffer from a disorder or disability of the mind, such as dementia or a profound learning disability, and who lack the mental capacity to consent to the care or treatment they need, should be cared for in a way that does not limit their rights or freedom of action.

People falling within this vulnerable group should only be deprived of their liberty when they lack capacity to consent and it has been assessed as in their best interests in order to protect them from harm.

The safeguards provide for deprivation of liberty to be made lawful through ‘Standard’ or ‘Urgent’ Authorisation processes. These processes are designed to prevent arbitrary decisions to deprive a person of liberty and give a right to challenge deprivation of liberty authorisations.

The deprivation of liberty safeguards mean that a ‘Managing Authority’ (i.e. the relevant Hospital or Care Home) must seek authorisation from a ‘Supervisory Body’ in order to lawfully deprive someone of their liberty. Before giving an authorisation, the Supervisory Body must be satisfied that the person has a mental disorder and lacks capacity to decide about their residence or treatment. The Supervisory Body is the Local Authority.

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2 Mental Capacity Act 2005 - Deprivation of liberty safeguards: Code of Practice to supplement the main Mental Capacity Act 2005 Code of Practice
A decision as to whether or not deprivation of liberty arises will depend on all the circumstances of the case. It is neither necessary nor appropriate to apply for a deprivation of liberty authorisation for everyone who is in hospital or a care home simply because the person concerned lacks capacity to decide whether or not they should be there. In deciding whether or not an application is necessary, a Managing Authority should carefully consider whether any restrictions that are, or will be, needed to provide ongoing care or treatment amount to a deprivation of liberty when looked at in their entirety.

1.3 What is deprivation of liberty?

There is no simple definition of deprivation of liberty. Staff are advised to read the Deprivation of Liberty Code of Practice 2007 which provides examples of case law where deprivation of liberty has been identified as existing and cases where it was considered not to be occurring.

In addition the Code includes further areas of consideration regarding what is permissible under the Mental Capacity Act 2005 in relation to restraint or restriction. The web address for the Code of Practice is included in the Foreword of this document.

The European Court of Human Rights (ECHR) has made it clear that the question of whether someone has been deprived of liberty depends on the particular circumstances of the case in question. Specifically, in its October 2004 judgment in HL v UK, the ECHR said:

“to determine whether there has been a deprivation of liberty, the starting point must be the specific situation of the individual concerned and account must be taken of a whole range of factors in a particular case such as type, duration, effects and manner of implementation of the measure in question. The distinction between a deprivation of, and restriction upon, liberty is merely one of degree or intensity and not one of nature or substance.”

In determining the degree of intensity between “deprivation of liberty” and “restriction upon liberty” It may be helpful to envisage a scale which moves from ‘restraint’ or ‘restriction’ at one end through to ‘deprivation of liberty’ at the other. Where an individual is on the scale will depend on the concrete circumstances of the individual and may change over time.

The European Court of Human Rights and UK courts have ruled on a number of cases about deprivation of liberty. Their judgments indicate that the following factors can be relevant to identifying whether steps taken involve more than restraint and amount to a deprivation of liberty. It is important to remember that this list is not exclusive; other factors may arise in future in particular cases.

a) Restraint is used, including sedation, to admit a person to an institution where that person is resisting admission.

b) Staff exercise complete and effective control over the care and movement of a person for a significant period.
Staff exercise control over assessments, treatment, contacts and residence.

A decision has been taken by the institution that the person will not be discharged into the care of others, or permitted to live elsewhere, unless the staff in the institution consider it appropriate.

A request by carers for a person to be discharged to their care is refused.

The person is unable to maintain social contacts because of restrictions placed on their access to other people.

The person loses autonomy because they are under continuous supervision and control.

1.4 Who is covered by the Deprivation of Liberty Safeguards?

The Deprivation of Liberty Safeguards cover patients in Hospital and people in Care Homes registered under the Health & Social Care Act 2008, whether placed under public or private arrangements.

The safeguards apply to people aged 18 and over whom:

(i) Suffer from a disorder or disability of mind and

(ii) Lack the capacity to give consent to the arrangements made for their care or treatment and

(iii) For whom such care (in circumstances that amount to a deprivation of liberty within the meaning of Article 5 of the European Convention of Human Rights) is considered, after an independent assessment, to be a necessary and proportionate response in their best interests to protect them from harm.

These safeguards cannot be used to detain people in hospital - if they are thought to object to being in hospital or to receiving treatment - for the treatment of a mental disorder in situations where the Mental Health Act 1983 could be used.

It is anticipated that the people who need to be covered by the Deprivation of Liberty Safeguards will mainly be those with significant learning disabilities or people suffering from dementia but will include a minority of others who have suffered physical injury, such as acquired brain injury.

The Deprivation of Liberty Safeguards do not apply to people other than those identified within the above settings. For example, those living within their own home, a sheltered or an extra care sheltered housing scheme are not covered by DoLS; should a person in such a setting be deprived, or at risk of being deprived, of their liberty then an application should be made to the Court of Protection.

1.5 When can a person be deprived of their liberty?

Depriving someone who lacks the capacity to consent to the arrangements made for their care or treatment of their liberty is a serious matter and the decision to do so
should not be taken lightly. The Deprivation of Liberty Safeguards make it clear that a person may only be deprived of their liberty:

a) in their own best interests to protect them from harm

b) if it is a proportionate response to the likelihood and seriousness of the harm, and

c) if there is no less restrictive alternative.

Under no circumstances must deprivation of liberty be used as a form of punishment, or for the convenience of professionals, carers or anyone else. Deprivation of liberty should not be extended due to delays in moving people between care or treatment settings, for example when somebody awaits discharge after completing a period of hospital treatment.

The safeguards apply regardless of whether the care is arranged privately or by a public body. Under the Human Rights Act 1998, the duty to act in accordance with the ECHR applies only to public authorities. However, all states that have signed up to the ECHR are obliged to make sure that the rights set out in the ECHR apply to all of their citizens. The Mental Capacity Act 2005 therefore makes it clear that the Deprivation of Liberty Safeguards apply to both publicly and privately arranged for care or treatment.

1.6 Recognising a deprivation of liberty

In determining whether deprivation of liberty has occurred, or is likely to occur, decision-makers need to consider all the facts in a particular case. There is no simple/single determinant that can be applied in every case, and it is likely that no single factor will, in itself, determine whether the overall set of steps being taken in relation to the relevant person amount to a deprivation of liberty. In general, the decision-maker should always consider the following:

a) All the circumstances of each and every case

b) The measures that are being taken in relation to the individual concerning their care arrangements: i.e. when are they required? For what time period do they endure? What are the effects of any restraints or restrictions on the individual? Why are they necessary? What aim do they seek to meet?

c) That are the views of the relevant person, their family or carers? Do any of them object to the measures?

d) How are any restraints or restrictions implemented? Do any of the constraints on the individual’s personal freedom go beyond ‘restraint’ or ‘restriction’ to the extent that they constitute a deprivation of liberty?
e) Are there any less restrictive options for delivering care or treatment that avoid deprivation of liberty altogether?

f) Does the cumulative effect of all the restrictions imposed on the person amount to a deprivation of liberty, even if individually they would not?

Bearing in mind that i) there is no definitive legal test for establishing what will amount to a deprivation of a person’s liberty and ii) that the core element of a deprivation of liberty is confinement, an analysis of European and domestic case law by Richard Jones suggests that the circumstances in which a court might find that there had been a deprivation of liberty included the following:

- Force, threats of medication being used to overcome the patient’s resistance to being taken to the hospital or care home. However, a deprivation of liberty will not occur if the force used constitutes restraint which is authorised by s.6 MCA 2005.
- Subterfuge being used to ensure the patient’s co-operation in being taken to the hospital or care home, e.g. the patient being misled into believing he or she will return home the next day.
- The decision to admit the patient into the hospital or care home being opposed by the relatives and/or carers who either live with or are closely involved in caring for the patient or a request by them for the patient to be discharged into their care being denied.
- Force or a locked door being used to prevent the patient from leaving the hospital or care home in a situation where the patient is making a purposeful attempt to leave and he or she cannot be persuaded to desist.
- An assessment concluding that the patient would make a purposeful attempt to leave the hospital or care home if he or she had the physical capacity to do so.
- Threats being used to dissuade the patient from making an attempt to leave the hospital or care home.
- Medication being used for the primary purpose of preventing the patient from making an attempt to leave the hospital or care home.
- A decision by the hospital or care home to deny or severely restrict access to the patient by relatives, carers and/or people with whom the patient enjoys a significant relationship.
- The patients access to the community being denied or severely restricted in a situation where that patient would be capable of benefiting from such access.

This is NOT an exhaustive list and other factors may arise in particular cases.

1.7 Restraint/restrictions in the context of Deprivation of Liberty Safeguards

The Mental Capacity Act 2005 states at s.6.4 that someone is using restraint if they:

- Use force – or threaten to use force – to make someone do something that they are resisting, or
- Restrict a person’s freedom of movement, whether they are resisting or not.

The following are examples of scenarios involving restraint, restriction and deprivation:

- Preventing a person from leaving a care home or hospital unaccompanied because there is a risk that they would try to cross a road in a dangerous way, is likely to be seen as proportionate restraint to prevent the person from coming to harm. It is unlikely that this act would, on its own, would constitute a deprivation of liberty.

- Locking a door to guard against immediate harm is unlikely, in itself to amount to a deprivation of liberty.

- Duration of any restrictions is a relevant factor when considering whether or not a person is deprived of their liberty. Actions that are immediately necessary to prevent harm, may not, in themselves, constitute a deprivation of liberty.

- Where the restriction or restraint is frequent, cumulative and ongoing, or if there are any other factors present, care providers should consider whether this has gone beyond permissible restraint, as defined within The Mental Capacity Act.

Guidance for the use of restraint within the Mental Capacity Act 2005 can be found through the following link:
Overarching Policy for Restrictive Physical Intervention


Paragraphs 6.40 to 6.48 of the main Mental Capacity Code of Practice contain guidance about the appropriate use of restraint. Restraint is appropriate when it is used to prevent harm to the person who lacks capacity and it is a proportionate response to the likelihood and seriousness of harm. Appropriate use of restraint falls short of deprivation of liberty.

The European Court of Human Rights has also indicated that the duration of any restriction is a relevant factor when considering whether or not a person is deprived of their liberty. This suggests that actions that are immediately necessary to prevent harm may not, in themselves, constitute a deprivation of liberty.

However, where the restriction or restraint is frequent, cumulative and ongoing, or if there are other factors present, then care providers should consider whether this has gone beyond permissible restraint, as defined in the Act. If so, then they must either apply for authorisation under the Deprivation of Liberty Safeguards or change the care provided to reduce the level of restraint.

1.8 Reducing the risk of deprivation of liberty occurring

Providers and commissioners of care can reduce the risk of taking steps that amount to a deprivation of liberty, by minimising the restrictions imposed and ensuring that
decisions are taken with the involvement of the relevant person and their family, friends and carers.

The processes for staff to follow are:

a) Make sure that all decisions are taken (and reviewed) in a structured way, and reasons for decisions recorded.

b) Follow established good practice for care planning.

c) Make a proper assessment of whether the person lacks capacity to decide whether or not to accept the care or treatment proposed, in line with the principles of the MCA/DoLS Code of Practice.

d) Before admitting a person to hospital or residential care in circumstances that may amount to a deprivation of liberty, consider whether the person’s needs could be met in a less restrictive way.

e) Any restrictions placed on the person while in Hospital or in a Care Home must be kept to the minimum necessary, and should be in place for the shortest possible period.

f) Take proper steps to help the relevant person retain contact with family, friends and carers. Where local advocacy services are available, their involvement should be encouraged to support the person and their family, friends and carers.

g) Review the care plan on an ongoing basis. It may well be helpful to include an independent element, possibly via an advocacy service, in the review.

2. The DOLS Procedure for Standard and Urgent Authorisations

There are some circumstances in which depriving a person, who lacks capacity to consent to the arrangements made for their care or treatment, of their liberty is necessary to protect them from harm and is in their best interests. To obtain authorisation to deprive someone of their liberty the following process should be followed.

An authorisation for deprivation of liberty does not, in itself, give authority to treat people, nor do anything else that would normally require their consent.
Overview of the MCA DOLS process

2.1 Role of LBRuT Safeguarding Adults & DoLS Team

The LBRuT’s Safeguarding Adults & DoLS Team has responsibility for the day to day management of the DoLS process. It consists of the Head of Safeguarding, a DoLS Administrative Assistant and a Safeguarding Adults/DoLS Co-ordinator. The team has responsibility for:

- Receiving and processing the applications from Managing Authorities
- Ensuring all assessments are completed by appropriate assessors and within timescales
- Supporting the Supervisory Body

Overview from 'Mental Capacity Act 2005- Deprivation of liberty safeguards: Code of Practice to supplement the main Mental Capacity Act Code of Practice'
• Providing information and advice to Managing Authorities, Health and Social Care Staff and other interested parties
• Following the ‘ADASS Protocol for the Inter-Authority Management of Deprivation of Liberty Safeguards Applications’

2.2 Role of the DoLS Administrator

The DoLS Administrator has the responsibility for receiving authorisation requests from Managing Authorities (care home or hospital), recording the necessary information in Frameworki (FWi) and forwarding the details on to the Safeguarding Adults/DoLS Co-ordinator. The DoLS Administrator will also provide the Safeguarding Adults/DoLS Co-ordinator with the contact details of any Managing Authorities who have requested forms; this will facilitate appropriate discussion to ensure that appropriate authorisation requests are made.

On receipt of an authorisation request, the DoLS Administrator must acknowledge receipt of the request (urgent/standard/3rd party) and upload the form on to FWi. They must also check whether the individual is placed out of Borough.

If the individual is placed out of Borough but within Greater London then the Safeguarding Adults/DoLS Co-ordinator must arrange for one of Richmond’s BIA’s to assess the individual, in keeping with the ‘Procedure for Pan London Management of Deprivation of Liberty Applications’.

If the individual is placed anywhere outside of Greater London then the ‘ADASS Protocol for the Inter-Authority Management of Deprivation of Liberty Safeguards Applications’ should be followed.

The ADASS Protocol can be accessed through the following link: http://www.adss.org.uk/index.php?option=com_content&view=article&id=308&Itemid=246

The DoLS Administrator will also:

• Send all relevant paperwork to the Best Interest Assessor to enable them to complete the assessment
• Monitor current authorisations to ensure that timely reminders are sent to Managing Authorities re the need to review and/or reassess
• Send all relevant correspondence to Managing Authorities and representatives
• Complete Independent Mental Capacity Advocate (IMCA) referrals where appropriate

The DoLS Administrator is responsible for providing support to the Supervisory Body and all forms and correspondence from the Supervisory Body will go through the
The DoLS Administrator will also ensure that all information is properly logged on FWi.

For an overview of the process from the receipt of the application from the Managing Authority, see Flowchart 3 in Appendix Two

2.3 Requests from Care Homes and Hospitals out of Borough

On receipt of any requests for authorisations the DoLS Administrator must check whether the relevant person is placed out of Borough. The LBRuT is responsible for commissioning all DoLS assessments for individuals who have ordinary residency status even if they are placed in a Care Home or Hospital out of Borough.

If the relevant person is placed out of Borough but within Greater London the Safeguarding Adults/DoLS Co-ordinator must arrange for all 6 assessments to be completed where appropriate. Depending on distance, it may be possible to send one of LBRuT’s Best Interest Assessors or S12 Doctors/Mental Health Assessors to complete the assessments. Alternatively the completion of these assessments can be commissioned from the Host Authority i.e. the Borough where the relevant person is placed.

If a Section 39A IMCA is needed for the DoLS assessment process, this will be provided by the Host Authority as part of the wider contractual agreement they will have with the IMCA service in that Borough.

If an IMCA is needed as a Relevant Persons Representative, the Safeguarding/DoLS Co-ordinator will commission this service appropriately. Depending on the location of the Care Home or Hospital it may be possible to use the LBRuT IMCA service (KAG). However, given that the Relevant Persons Representative will need to visit the relevant person every two weeks this may not be appropriate and the Host Authorities IMCA service may need to be used.

If the relevant person is placed anywhere outside of Greater London then the ‘ADASS Protocol for the Inter-Authority Management of Deprivation of Liberty Safeguards Applications’ should be followed.

The ADASS Protocol can be accessed through the following link:
http://www.adss.org.uk/index.php?option=com_content&view=article&id=308&Itemid=246

2.4 Role of the Safeguarding/DoLS Coordinator
The Safeguarding Adults/DoLS Co-ordinator represents and acts on behalf of the Supervisory Body.
On receipt of an application from the Managing Authority, the Safeguarding Adults/DoLS Co-ordinator will check the validity of the application and will refer the application back to the Managing Authority if insufficient fundamental details are included. In the event of this occurring, the time scales for completion will start again on receipt of the new application from the Managing Authority.

On receipt of a completed authorisation request from a Managing Authority, the Safeguarding Adults/DoLS Co-ordinator will identify whether the relevant person has someone to support them, who is not engaged in providing care or treatment in a professional capacity or for remuneration. If they do not, the Safeguarding Adults/DoLS Co-ordinator will instruct the DoLS Administrator to make a referral to an Independent Mental Capacity Advocate to support the relevant person.

The Safeguarding Adults/DoLS Co-ordinator will direct a Best Interest Assessor to undertake up to 4 of the six qualifying assessments and will commission a Mental Health Assessor to undertake the remaining assessments. Mental Health Assessors will have undertaken the relevant training necessary for their particular role i.e. standard training for Deprivation of Liberty Mental Health Assessors.

In the event that an Urgent Authorisation is in place the Safeguarding Adults/DoLS Co-ordinator will notify the Best Interest Assessors and any IMCA appointed of the seven day timescale in which the assessments need to be completed.

2.5 The Deprivation of Liberty Safeguards Six Assessments

As soon as the Supervisory Body has confirmed that the request for a Standard Authorisation should be pursued, it must obtain the relevant assessments to ascertain whether the qualifying requirements of the Deprivation of Liberty Safeguards are met. Assessments must be completed within 21 days for a Standard Authorisation, or where an Urgent Authorisation has been given, before the Urgent Authorisation - including any extension - has expired.

The six assessments that are required to be completed are:

- Age Assessment
- No Refusals Assessment
- Mental Capacity Assessment
- Mental Health Assessment
- Eligibility Assessment
The six assessments do not have to be completed by six different assessors; however, there must be at least two assessors and they must each make their own decisions. The following table explains at a glance the type of assessment that is required, its purpose and who it should be undertaken by:

<table>
<thead>
<tr>
<th>Type of Assessment</th>
<th>Purpose of the assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age Assessment</td>
<td>Undertaken by Best Interests Assessor. The purpose of the assessment is to confirm whether the relevant person is aged 18 or over.</td>
</tr>
<tr>
<td>No Refusals Assessment</td>
<td>Undertaken by Best Interests Assessor. The purpose of the assessment is to establish whether an authorisation to deprive the relevant person of their liberty would conflict with another existing authority for decision-making for that person; such as a valid decision by a Court Appointed Deputy or an advanced decision to refuse treatment.</td>
</tr>
<tr>
<td>Mental Capacity Assessment</td>
<td>Undertaken by Section 12 Doctor or Best Interests Assessor. The purpose of the assessment is to establish whether the relevant person lacks capacity to decide whether or not they should be accommodated in the relevant care home or hospital to be given the care or treatment.</td>
</tr>
<tr>
<td>Mental Health Assessment</td>
<td>Undertaken by Section 12 Doctor The purpose of the assessment is to establish whether the relevant person has a mental disorder within the meaning of the Mental Health Act 1983. This means any disorder or disability of mind, including learning disabilities although excluding dependence on alcohol or drugs. It is not an assessment to determine whether the relevant person requires mental health treatment but specifically if a disorder exists.</td>
</tr>
<tr>
<td>Eligibility Assessment</td>
<td>Undertaken by Section 12 Doctor The purpose of the assessment is to clarify the relevant person’s status or potential status under the Mental Health Act 1983. For example a person would not be eligible for a deprivation of liberty authorization if they are detained as a hospital inpatient under the Mental Health Act 1983 or if the authorization, if given, would be inconsistent with an obligation placed on them under the Mental Health Act 1983 such as guardianship which stipulates where they must live.</td>
</tr>
<tr>
<td>Best Interests</td>
<td>Undertaken by the Best Interests Assessor</td>
</tr>
</tbody>
</table>
Assessment

The purpose of the assessment is to establish if deprivation of liberty is occurring or is going to occur and if so, whether:

- It is in the best interests of the relevant person to be deprived of their liberty
- It is necessary for them to be deprived of liberty in order to prevent harm to themselves and
- Deprivation of liberty is a proportionate response to the likelihood of the relevant person suffering harm and the seriousness of that harm.
- There is no less restrictive option.

It is recommended that the best interests assessment, is not started until there is a reasonable expectation that the other qualifying requirements are met.

Where an ‘equivalent assessment’ to any of these assessments has already been obtained, it may be relied upon instead of obtaining a fresh assessment. An example could be a recent assessment carried out for the Mental Health Act 1983.

An equivalent assessment is an assessment that:

- Has been carried out in the preceding 12 months, not necessarily for the purpose of a deprivation of liberty authorisation.
- Meets all the requirements of the deprivation of liberty assessment (it is unlikely that all the requirements could be met for a Best Interests Assessment), and
- The Supervisory Body accepts and sees no reason why it should no longer be accurate.

If an equivalent assessment is used the *DoLS Form 11- ‘Record That an Equivalent Assessment Is Being used’* is to be completed.

**Deciding to use an equivalent assessment should NOT be done routinely**

**General provisions concerning assessments**

Assessors may examine and take copies of records which they consider may be relevant to their assessment. Assessors should list in their specific assessment which records they have examined.

As soon as possible after carrying out their assessments, the assessors must give copies of their assessment report(s) to:

- The registered person for the Managing Authority
- The relevant person and their representative, and
Any IMCA involved.

Assessors should be mindful of the importance of the principles of confidentiality and information sharing within the DoLS process (see Key References Section) recognising that they will be consulting with a range of people who will require reassurance about the use and retention of the information provided.

2.6 Role of the Supervisory Body

A Supervisory Body is responsible for:
- Ensuring the process is clear and consistently applied
- Considering requests, for commissioning the required assessments (either by a section 12 doctor, Mental Health Assessor or Best Interest Assessor), and where all the six assessments agree for authorising the deprivation of liberty.

Membership
The London Borough of Richmond upon Thames (LBRuT) Supervisory Body will consist of nominated officers who will hold delegated authority to authorise Deprivation of Liberty of Safeguard Authorisations on behalf of the Supervisory Body. (See Appendix 9)

The LBRuT Supervisory Body is responsible for considering requests for authorisations, commissioning the required assessments and, where all the assessments agree, authorising the deprivation of liberty.

Where the Deprivation of Liberty Safeguards are applied to a person in a registered Care Home in England or Wales the appropriate Supervisory Body is the Local Authority in which the person is ordinarily resident.
If the person is of no fixed abode, then the appropriate Supervisory Body is the Supervisory Body for the Local Authority in which the Care Home is located.
If the person has moved from one Local Authority to a Care Home in another Local Authority - without the Local Authority where they previously resided making the arrangements for the placement - then that person is ordinarily resident in the Local Authority in which the Care Home is situated.

There are two types of authorisations, **Standard** and **Urgent**. A Managing Authority must request a Standard Authorisation when it appears likely that, within the next 28 days a person will be accommodated in their Hospital or Care Home in circumstances that amount to a deprivation of their liberty. Wherever possible an application to the relevant Supervisory Body must be made in advance. Where this is not possible, and the Managing Authority believes it is necessary to deprive a person of their liberty in their best interests, then they must give itself an Urgent Authorisation and then obtain a Standard Authorisation within 7 days.

### 2.7 Role of the Managing Authority

A **Managing Authority** has responsibility for applying for authorisation of deprivation of liberty for any person who may come within the scope of the Deprivation of Liberty Safeguards.

In the case of an NHS hospital, the Managing Authority is the NHS body responsible for the running of the hospital in which the relevant person is, or is to be, a resident. In the case of a Care Home or a private Hospital, the Managing Authority will be the person registered, or required to be registered as the Registered Manager, under the Health and Social Care Act 2008.

If a healthcare or social care professional thinks that an authorisation is needed, they should inform the Managing Authority. This might be as a result of a care review or needs assessment but could happen at any other time too.

Managing Authorities should have their own procedure in place that identifies:

- Whether deprivation of liberty is or may be necessary in a particular case.
- Whether they have taken all practical and reasonable steps to avoid a deprivation of liberty from occurring
- The steps they should take to assess whether to seek authorisation.
- What action they should take if they do need to request an authorisation.
- How they should review cases where authorisation is or may be necessary
- Who should take the necessary action
2.8 Application process for a Standard Authorisation

A Managing Authority must apply for a Standard Authorisation. The application should be made in writing to the Supervisory Body. A standard form is available for this purpose (Form 4).

In England, the request from a Managing Authority for a Standard Authorisation must include:

a) The name and gender of the relevant person

b) The age of the relevant person or, where this is not known, whether the Managing Authority reasonably believes that the relevant person is aged 18 years or older

c) The address at which the relevant person is currently located, and the telephone number at the address

d) The name, address and telephone number of the managing authority and the name of the person within the Managing Authority who is dealing with the request.

e) The purpose for which the authorisation is requested

f) The date from which the authorisation is sought, and

g) Whether the Managing Authority has given an Urgent Authorisation and, if so, the date on which it expires.
A request for a Standard Authorisation must also include, if it is available or could reasonably be obtained by the Managing Authority:

1. any medical information relating to the relevant person’s health that the managing authority reasonably considers to be relevant to the proposed restrictions to their liberty

2. the diagnosis of the mental disorder (within the meaning of the Mental Health Act 1983 but disregarding any exclusion for persons with learning disability) from which the relevant person is suffering

3. any relevant care plans and needs assessments

4. the racial, ethnic or national origins of the relevant person

5. whether the relevant person has any special communication needs

6. details of the proposed restrictions on the relevant person’s liberty

7. whether it is necessary for an Independent Mental Capacity Advocate (IMCA) to be instructed

8. where the purpose of the proposed restrictions to the relevant person’s liberty is to give treatment, whether the relevant person has made an advance decision that may be valid and applicable to some or all of that treatment

9. whether there is an existing Standard Authorisation in relation to the detention of the relevant person and, if so, the date of the expiry of that authorisation

10. whether the relevant person is subject to any requirements of the Mental Health Act 1983, and

11. the name, address and telephone number of anyone named by the relevant person as someone to be consulted about their welfare, anyone engaged in caring for the person or interested in their welfare, any donee of a Lasting Power of Attorney granted by the person, any deputy appointed for the person by the court, and any IMCA who has already been instructed.

If there is an existing authorisation, then information that has not changed does not have to be resupplied.

In the vast majority of cases, it should be possible to plan in advance (up to 28 days) so that a Standard Authorisation can be obtained before the deprivation of liberty begins. There may, however, be some exceptional cases where the need for the deprivation of liberty is so urgent that it is in the best interests of the person for it to begin while the application is being considered. In that case, the Managing Authority may give an Urgent Authorisation for up to seven days.

### 2.9 Application process for an Urgent Authorisation
A Managing Authority can give itself an Urgent Authorisation for deprivation where:

- It is required to make a request to the Supervisory Body for a Standard Authorisation, but believes that the need for the person to be deprived of their liberty is so urgent that the deprivation needs to begin before the request is made, or
- It has made a request for a Standard Authorisation, but believes that the need for a person to be deprived of liberty has now become so urgent that deprivation of liberty needs to begin before the request is dealt with by the Supervisory Body.

This authorisation will make the deprivation of liberty lawful for seven days provided a Standard Authorisation has been applied for. The Managing Authority must notify the Supervisory Body on the Standard Authorisation that an Urgent Authorisation has been given.

The Managing Authority must keep a written record of any Urgent Authorisations given, and be able to show that they have made a reasonable decision based on their professional judgement after taking into account all the relevant factors. For this process *DoLS Form 1 Application Form for a Urgent Authorisation* is to be used (Appendix 2).

If there are exceptional reasons why a Standard Authorisation request cannot be dealt with within the seven day period of the Urgent Authorisation, the Managing Authority may ask the Supervisory Body to extend the duration of the Urgent Authorisation for a maximum of a further seven days. *DoLS Form 2* is to be used (Appendix 2).

It is the responsibility of the Supervisory Body to decide whether circumstances exist for an extension to the authorisation. The supervisory body may only extend the duration of the Urgent Authorisation if:

- The Managing Authority has made a request for a Standard Authorisation
- There are exceptional reasons why it has not yet been possible to make a Standard Authorisation, and
- It is essential for the deprivation of liberty to continue while the Supervisory Body makes its decision.

*DoLS Form 3 should be completed by the Safeguarding Adults & DoLS Team for the Supervisory Body.*

> **An Urgent Authorisation can never be given without a request for Standard Authorisation being made simultaneously.**

### 2.10 Who to inform that an application has been made
The Managing Authority should tell the relevant person’s family, friends and carers, and any IMCA already involved in the relevant person’s case that it has applied for an authorisation of deprivation of liberty, unless it is impractical or impossible to do so or undesirable in terms of the interests of the relevant person’s health or safety. Anyone who is engaged in caring for the relevant person or interested in their welfare, or who has been named by them as a person to consult, must be given the opportunity to input their views on whether deprivation of liberty is in the best interests of the relevant person, as far as is practical and appropriate. The views of the relevant person about who to inform and consult should be taken into account.

The Managing Authority must notify the Supervisory Body if it is satisfied that there is no one who should be consulted in determining the relevant person’s best interests, except those providing care and treatment for the relevant person in a professional capacity or for remuneration. In such a case, the Supervisory Body must instruct an IMCA to represent and support the relevant person before any assessments take place.

**All requests for DoLS authorisations must be made to the Richmond DoLS Office. Contact details can be found in Appendix 3**

The Supervisory Body **must**:

- Notify the Managing Authority of the length of any extension granted amend the original Urgent Authorisation so that it states the extended duration
- If it does not extend the authorisation, inform the Managing Authority of its decision and the reasons for it using the same form.

The Managing Authority **must**:

- Where possible ensure that the relevant person understands the effect of the authorisation and the right to challenge the decision.
- Provide copies of the amended Urgent Authorisation to the relevant person and all those also involved.
- The Managing Authority is responsible for ensuring that it does not deprive a person of their liberty without an authorisation. If a request for an authorisation is refused, it will need to review the relevant person’s actual or proposed care arrangements to ensure that a deprivation of liberty is not allowed to either continue or commence.
2.11 When assessments conclude that the relevant person meets the DoLS requirement

All assessments are positive
If all the assessments in the assessment process indicate that the relevant person meets all the qualifying requirements, then the Supervisory Body must give a deprivation of liberty authorisation and complete Form 12 (granting authorisation). An Authorised Signatory(s) is appointed for the respective Supervisory Body who may attach conditions to the authorisation.

LBRuT’s Supervisory Body will also satisfy itself that the assessments are of a quality and standard that meet the requirements of best practice and that there is good evidence for the conclusion reached. Where the Authorised Signatory acting for the Supervisory Body is not clear of the evidence for the conclusion, they will discuss this with the relevant assessor(s). The assessors’ reports are independent of the Supervisory Body, but the Supervisory Body must perform a scrutiny role in ensuring the integrity of assessments, in fulfilling the Supervisory Body’s responsibilities and in ensuring the rights of the relevant person are safeguarded. The Supervisory Body cannot give a Standard Authorisation if any of the requirements are not fulfilled.

The Supervisory Body must set the period of the authorisation, which may not be longer than that recommended by the Best Interests Assessor.

When the Supervisory Body gives a Standard Authorisation, it must do so in writing and must state the following:

a) the name of the relevant person

b) the name of the relevant Hospital or Care Home

c) the period during which the authorisation is to be in force (which may not exceed the period recommended by the Best Interest Assessor)
d) the purpose for which the authorisation is given (i.e. why the person needs to be deprived of their liberty)

e) any conditions subject to which the authorisation is given, and

f) the reason why each qualifying requirement is met.

The Supervisory Body may attach conditions to the authorisation. Before deciding whether to give the authorisation subject to conditions, the Supervisory Body must consider any recommendations made by the Best Interest Assessor. Where the Supervisory Body does not attach conditions as recommended by the Best Interest Assessor, it should discuss the matter with the Best Interest Assessor in case the rejection or variation of the conditions would significantly affect the other conclusions the Best Interest Assessor reached in their report.

It is the responsibility of the Supervisory Body to appoint a representative for the relevant person: the Relevant Persons Representative.

As soon as possible after giving the authorisation, the Supervisory Body must give a copy of the authorisation to:

a) the Managing Authority

b) the relevant person

c) the Relevant Persons Representative

d) any Independent Mental Capacity Advocate (IMCA) involved, and

e) every interested person named by the Best Interest Assessor in their report as somebody they have consulted in carrying out their assessment.

The Supervisory Body must also keep a written record of any Standard Authorisation that it gives.

The Managing Authority must take all practical and possible steps to ensure that the relevant person understands the effect of the authorisation and their rights around it. These include their right to challenge the authorisation via the Court of Protection, their right to request a review, and their right to have an IMCA instructed, along with the process for doing so. Appropriate information must be given to the relevant person both orally and in writing. Any written information must also be given to the relevant person’s representative. This must happen as soon as possible and practical after the authorisation is given.

A deprivation of liberty authorisation – whether Urgent or Standard – relates solely to the issue of deprivation of liberty. It does not give authority to treat people, nor to do anything else that would normally require their consent. The arrangements for providing care and treatment to people in respect of whom a deprivation of liberty authorisation is in force are subject to the wider provisions of the Mental Capacity Act 2005.
If a person who is subject to a Standard Authorisation moves to a different Hospital or Care Home, the Managing Authority of the new Hospital or Care Home must request a new Standard Authorisation. The application should be made before the move takes place.

If the move has to take place so urgently that this is impossible, the Managing Authority of the new Hospital or Care Home will need to give an Urgent Authorisation and simultaneously make a Standard Authorisation request.

2.12 When assessments conclude that the relevant person does not meet requirements

If any of the assessments conclude that one of the requirements is not met, then the assessment process should stop immediately and authorisation may not be given. In such circumstances the Supervisory Body will:

a) inform anyone still engaged in carrying out an assessment that they are not required to complete it

b) notify the Managing Authority, the relevant person, any IMCA involved and every interested person consulted by the Best Interest Assessor that authorisation has not been given (a standard form is used for this purpose), and

c) provide the Managing Authority, the relevant person and any IMCA involved with copies of those assessments that have been carried out. This must be done as soon as possible, because in some cases different arrangements will need to be made for the person’s care.

If the reason the Standard Authorisation cannot be given is because the eligibility requirement is not met, it may be necessary to consider making the person subject to the Mental Health Act 1983. If this is the case, it may be possible to use the same assessors to make that decision, thereby minimising the assessment processes.

As soon as possible after making the decision NOT to give authorisation the Supervisory Body must also forward a copy of the outcome *(DoLS Form 13 - Supervisory body declines a request for a standard authorisation)* to the DoLS Administrator to distribute copies to:

- The Managing Authority
- The Relevant Person
- The Relevant Persons Representative
- Any Independent Mental Capacity Advocate instructed for the purpose in relation to the relevant persons detention and
- Every interested person named by the Best Interest Assessor in their report as somebody they have consulted in carrying out their assessment.

For details regarding recording see Section 7 of this document; Record Keeping.
2.13 When an application for authorisation is refused

Without an authorisation being approved by the Supervisory Body, the Managing Authority is responsible for ensuring that the relevant person is not deprived of their liberty.

The commissioners of care (a Supervisory Body, or private funder) are responsible for ensuring that any care package commissioned is in compliance with the Code of Practice for the Mental Capacity Act 2005, and does not include an inappropriate deprivation of liberty.

The actions that Managing Authorities and commissioners of care should consider if a request is turned down will depend on the reason why the authorisation has not been given.

<table>
<thead>
<tr>
<th>Reason authorisation declined</th>
<th>Action required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Best Interests Assessor concluded that the person was not in fact being, or going to be, deprived of liberty</td>
<td>No action is likely to be necessary.</td>
</tr>
</tbody>
</table>
| Best Interests Assessor concluded that the proposed deprivation of liberty was not in the person’s best interests | The Registered Manager of the Managing Authority (in conjunction with the commissioner of the care) will need to consider how the care plan could be changed to avoid deprivation of liberty. They should:  
- Examine carefully the reasons given in the Best Interest Assessor’s report  
- Discuss, where helpful, with the Best Interest Assessor.  
- Where appropriate, discuss the matter with family and carers.  
If the person is not yet a resident in the Care Home or Hospital, the revised care plan may not involve admission to that facility. |

The Mental Capacity Assessor | The Managing Authority will need to |
concluded that the person has capacity to make decisions about their care to consider, in conjunction with the Supervisory Body, how to support the person to make such decisions.

The person does not have a mental disorder

The care plan will need to be modified to avoid a deprivation of liberty.

There is a valid refusal by an attorney or deputy or an applicable and valid advance decision

Alternative care arrangements will need to be made

There is a question about the refusal

A decision may be sought from the Court of Protection.

The person is under 18

Use of the Children Act 1989 may be considered.

Where the Best Interest Assessor comes to the conclusion that the best interests requirement is not met, but it appears that the relevant person is being deprived of their liberty, the Best Interest Assessor must inform the Supervisory Body and explain in their assessment why they have reached that conclusion. The Supervisory Body will need to liaise with the Managing Authority in order to ensure that a deprivation of liberty is not permitted to continue in the absence of an appropriate authorisation. The person’s care plan and the provision of care must be reviewed immediately and the changes made as soon as possible. The steps taken to end the deprivation of liberty should be recorded in the care plan. Where possible it will be important to involve family, friends and carers in speedily deciding how to prevent the unauthorised deprivation of liberty from continuing.

It is the responsibility of the Managing Authority to comply with the law in this situation and it will need to keep the person’s care under review to ensure that unlawful deprivation of liberty does not arise in future.

Should the Supervisory Body have continuing doubts about the matter, it should alert the Care Quality Commission (CQC) who can be contacted at the following address:

Care Quality Commission
7th Floor, New Kings Beam House
22 Upper Ground
London
SE1 9BW

In addition further details regarding the role of the Care Quality Commission can be accessed on their website: [www.cqc.org.uk/](http://www.cqc.org.uk/)
3. **Role of Best Interest Assessor**

The procedure for the training and management of Best Interest Assessors who are employed within the Borough or Health is co-ordinated by the Safeguarding Adults and DoLS team and information will be provided on request (see Appendix 10).

Independent Assessors – Best Interest or Mental Health Assessors – must provide evidence of their qualifications and training and undergo the necessary relevant enhanced CRB checks before commencing work for the Borough. Independent Assessors must ensure that they have adequate indemnity insurance and be willing to provide evidence of this.

The BIA is required to provide an independent and objective view of whether or not there is a genuine justification for deprivation of liberty, taking into account all the relevant views and factors. In some cases a single organisation will be both the Managing Authority and the Supervisory Body and the DoLS do not prevent it from acting in both capacities. However, the regulations state that the Best Interest Assessor should not be directly involved within the care provision of the relevant person or directly providing services to the relevant person.

The BIA will – at the direction of the Safeguarding Adults/DoLS Co-ordinator (on behalf of the Supervisory Body) – complete up to 4 of the 6 DoLS assessments

The BIA will also:

- Recommend someone to be appointed as the Relevant Person’s Representative (where appropriate)
- Recommend a period for which the deprivation of liberty should be authorised.
- Attach conditions, if appropriate, which the Supervisory Body should consider.
- Undertake reviews of DoLS Authorisations
- Liaise with other Assessors within the process
- Involve the relevant person in the assessment process as much as is possible and practical, and help them to participate in decision-making.
- Provide an independent and objective view of whether or not there is a genuine justification for deprivation of liberty, taking into account all the relevant views and factors
- Collate their assessments and forward the conclusion of each, either individually or collectively to the Authorised Signatory for the Supervisory Body.

If translators are required, independent translators should be instructed. Family members should not act as interpreters for other members of their family.
3.1 Best Interest Assessor Process

The first task of the Best Interests Assessor (BIA) is to establish whether deprivation of liberty is currently occurring or is going to occur within the next 28 days, since there is no point in the assessment process proceeding further if deprivation of liberty is not an issue.

If the BIA considers that deprivation of liberty is occurring or is likely to occur with 28 days they should start a full Best Interest Assessment.

In addition to undertaking their own assessments the BIA will be required to liaise with all the others assessors within the process. It is the responsibility of the BIA to collate all the assessments and forward the conclusion of each, either individually or collectively, to the Authorised Signatory for the Supervisory Body.

Within the process of assessment, the BIA must involve the relevant person in the assessment process as much as is possible and practical, and help them to participate in decision-making. The relevant person should be given the support needed by the BIA to participate and the appropriate means for communication or language where applicable.

**Considerations for BIAs:**

- Whether any harm to the person could arise if the deprivation of liberty does not take place
- What that harm would be
- How likely that harm is to arise – i.e. is the level of risk sufficient to justify a step as serious as depriving a person of their liberty
- What other care options are there which could avoid deprivation of liberty
- If deprivation of liberty is currently unavoidable, what action could be taken to avoid it in the future?

*And* as far as is practical and possible, seek the views of and record, name and address of every interested person whom they have consulted:

- Anyone the relevant person has previously named as someone they want to be consulted
- Anyone involved in caring for the person
- Anyone interested in the person’s welfare (for example, family carers, other close relatives, or an advocate already working with the person) and
- Any deputy representing the relevant person.
If the Best Interest Assessment supports deprivation of liberty the BIA must:

- State what the maximum duration should be for a period not exceeding 12 months. In LBRuT the maximum duration has been limited to 6 months – see below
- Set out the reasons for selecting the period stated, and
- Take into account any available indication of how likely it is that the relevant person’s circumstances will change, including the expected progression of illness or disability

Deprivation of liberty should be for the minimum period necessary. Although by law it is possible to set a 12-month authorisation period, LBRuT’s Supervisory Body has reduced this maximum period to 6 months. This decision was taken to ensure that authorisations are reviewed and monitored appropriately on a regular basis. When recommending the authorisation period the BIA will need to be confident that there is unlikely to be a change in the person’s circumstances that would affect the authorisation within that timescale.

If the BIA completes their assessment and concludes there is a deprivation of liberty but that it is not in the relevant persons best interest (Unauthorised Deprivation) they must make the necessary recommendations on the changes required to the care plan to avoid the deprivation occurring. They should aim to be a useful as possible to the commissioners and providers of care (Managing Authority) in deciding on future actions and care provision. A copy of the report should be included in the relevant persons care plan or case notes to ensure that their views about how a deprivation of liberty can be avoided to make clear to the providers of care and relevant staff.

Any safeguarding issues identified by the BIA during the assessment process must be reported to the Supervisory Body who will make necessary arrangements for them to be followed up by the appropriate Community Team.

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**All assessments must be sent to the Supervisory Body within timescale. If there are concerns regarding completion of reports, this MUST be flagged up with the Supervisory Body immediately.**
Best Interest Assessor process- Standard/Urgent Authorisation

Safeguarding Adults/DoLS Co-ordinator allocates case and advises timescales for completion:
- Urgent requests: 6 days
- Standard requests: 20 days

Establish whether DoLS is currently occurring or is going to occur within the next 28 days.

Undertake all assessments requested: Best Interest Assessment, No Refusals and possibly a Mental Capacity Assessment

Liaise with S12 doctor throughout assessment process

If any assessment criteria’s are not met the assessment process must stop

Identify Relevant Person Representative (RPR) and complete Form 24

If no RPR is identified, DoLS Administrator completes referral for an IMCA to be Paid Representative (Form 25)

DoLS Admin completes Form 25 which the supervisory body will sign

If an RPR is identified, send completed Form 24 to them to sign and send back to DoLS Admin

DoLS Admin completes Form 25 which the supervisory body will sign

Send all completed assessments to DoLS Admin

Assessment checked and scrutised by SGA/DoLS coordinator in preparation for SB signing

SGA/DoLS Coordinator completes relevant forms (Form 12 if it is a DoLS and Form 13 if it is not a DoLS) and submits to SB body with all 6 assessments for signing.

All signed forms given to the DoLS Admin to upload on to Fwi and send out to all relevant parties.

All assessments must be sent to the Supervisory Body within timescale. If there are concerns regarding completion of reports. This MUST be flagged up with the Supervisory Body immediately.
If the BIA has been asked to undertake an assessment to establish whether an unauthorised deprivation of liberty is occurring, an unauthorised deprivation of liberty assessor’s report must be completed. The report is passed to the Supervisory Body.

If the report finds that the relevant person is subject to an unauthorised deprivation of liberty, the Managing Authority is deemed to have requested a Standard Authorisation in relation to the relevant person. The authorisation process starts from the beginning as described above.

The following steps must be taken:

- The Managing Authority must provide the Supervisory Body with the information that is required whenever such a request is actually made. It must complete Form 4. The Managing Authority is deemed to have requested a Standard Authorisation in relation to the relevant person and send it to the Supervisory Body, via LBRuT’s Safeguarding Adults and DoLS Team.

- The Best Interests Assessor, Section 12 doctor, IMCA and the six assessments will be arranged by the Safeguarding/DoLS Co-ordinator, on behalf of the Supervisory Body.

- If the Managing Authority considers that the present care and/or treatment that has been found to amount to deprivation of liberty care should continue while the assessments are carried out, it must give itself an Urgent Authorisation by completing DoLS Form 1 - For the giving of an Urgent Authorisation by a managing authority.
• If an Urgent Authorisation form is issued then the necessary assessments must be completed within the period of the Urgent Authorisation.

See Appendix 5 for Flowchart 5 contains details on 3rd party applications

### 3.3 Requests from a 3rd party for an application for an authorisation for a deprivation of liberty.

The Deprivation of Liberty Safeguards include measures for responding to situations where someone in a Care Home or Hospital is thought to be deprived of their liberty but without proper authorisation. If an individual believes that someone is being deprived of their liberty without proper authority, the Mental Capacity Act allows for them to ask the Managing Authority to request a Standard Authorisation. The individual may do this using *Deprivation of Liberty Letter 1 – Letter to the Managing Authority*. This letter includes the following information:

- Name of the person they are concerned about
- Name of the relevant Hospital or Care Home
- An explanation of why it is thought the person is being deprived of their liberty (as far as they are able to).

In such circumstances, the Safeguarding Adults/DoLS Co-ordinator, acting on behalf of the Supervisory Body, must select and appoint a person who is suitable and eligible to carry out a Best Interest Assessment to consider whether the relevant person is being deprived of their liberty. Depending on the outcome of this assessment it may subsequently be necessary for the Supervisory Body to commission the s12 doctor or Mental Health Assessor to complete their assessments.

If the Best Interest Assessment concludes there was no deprivation of liberty there is no need for the other assessments to be completed, unless there is information to suggest the person is detaineable under the Mental Health Act 1983; in which case a S12 doctor or Mental Health Assessor will need to complete the Eligibility Assessment.

If the Managing Authority does not then request a Standard Authorisation “within a reasonable period” the individual may ask the Supervisory Body to decide whether or not there is an Unauthorised Deprivation of liberty. The individual may do this using *Deprivation of Liberty Letter 2 – Letter to the Supervisory Body*

The use of the letters identified in this section is not mandatory. Any oral or written request should include the information highlighted within the letter template.

The request to assess whether or not there is an unauthorised deprivation of liberty should be completed by the Safeguarding/DoLS Co-ordinator and recorded on *DoLS Form 16 – Record of Supervisory Bodies Action on Receipt of Notification of a Possible Unauthorised Deprivation of Liberty.*
The Supervisory Body does not, however, need to arrange such an assessment where it appears to the Supervisory Body that the request they have received is frivolous or vexatious. For example where the person is very obviously not being deprived of their liberty or where a recent assessment has been carried out which concluded there was no deprivation and the circumstances have not since changed which would merit a reassessment.

A Best Interest Assessor should be commissioned to undertake a report of the situation and should record their findings using **DoLS Form 17– Unauthorised Deprivation of Liberty Assessors report.**

On receipt of DoLS Form 17, the Authorised Signatory for the Supervisory Body will need to complete **DoLS Form 18 – Supervisory Body’s Decision Following The Receipt of an Unauthorised Deprivation of Liberty Assessors Report.**

If the relevant person is subject to an unauthorised deprivation of liberty, the following steps must be taken:

- The Managing Authority is deemed to have requested a Standard Authorisation in relation to the relevant person.
- The Managing Authority therefore must provide the Supervisory Body with the information that is required whenever such a request is actually made. It must now complete DoLS Form 4 and send it to the Supervisory Body, via the Safeguarding Adults/ DoLS Team.
- The Best Interest Assessor, Section 12 doctor, IMCA and the six assessments will be arranged by the Safeguarding Adults/ DoLS Coordinator, on behalf of the Supervisory Body as the completed DoLS Form 4 will trigger a request for a Standard Authorisation.
- If the Managing Authority considers that the care and/or treatment should continue while the assessments are carried out, it must give itself an Urgent Authorisation by completing DoLS Form 1.
- If an Urgent Authorisation form is issued then the necessary assessments must be completed within the period of the Urgent Authorisation.

### 4. The role of the Relevant Persons Representative

Once a Standard Authorisation has been granted, a Relevant Persons Representative (RPR) must be appointed by the Best Interest Assessor as soon as possible to represent the person who has been deprived of their liberty.
The Best Interest Assessor must appoint a RPR for every person issued with a Standard Authorisation for deprivation of liberty. The representative is appointed at the time the authorisation is granted or very shortly thereafter.

The RPR role is:

- to maintain contact with the relevant person, and
- to represent and support the relevant person in all matters relating to the operation of the deprivation of liberty safeguards, including, if appropriate, triggering a review, using an organisations’ complaints procedure on the person’s behalf or making an application to the Court of Protection.

If the RPR has insufficient contact with the relevant person, for whatever reason, the relevant person may effectively be unable to access important review and appeal rights.

If the RPR does not maintain an appropriate level of contact with the relevant person, the Managing Authority will need to consider informing the Supervisory Body.

When the Managing Authority is reviewing the relevant person’s care plan, it should consider whether the RPR is in sufficient contact with the relevant person to offer effective support. Records kept by the Managing Authority regarding frequency of contact will support this consideration.

A person selected to be the relevant person’s RPR must inform the Supervisory Body in writing that they are willing to accept the appointment. The Best Interest Assessor is required to complete Form 24 which is the selection of a representative. Part H of this form allows for a potential representative to indicate their willingness to be selected as the representative should they be offered the appointment.

If the RPR has been sent a form which they fail to sign, then they cannot be appointed. In that event the Supervisory Body must instruct a 39A IMCA, if appropriate, until the situation has been resolved and a RPR has been officially appointed. The Safeguarding/DoLS Co-ordinator must contact potential RPR and explain the importance of signing the form i.e. it is the written confirmation of the RPR’s willingness to take on this role and is required to validate the appointment. If the form is signed the 39A IMCA will be informed and their involvement will end.

If the form is not signed a decision must be made by the Supervisory Body about whether a 39C IMCA needs to be appointed (see for clarification of their role) as an interim measure until the matter can be resolved or a different RPR is identified and appointed. A 39C IMCA will need to be instructed because once an authorisation is granted the 39A role is limited to deciding whether to challenge an authorisation; they do not have the powers of the Relevant Persons Representative to demand a review or to have non-means tested access to the Court of Protection which the 39C IMCA does have.
This is a crucial role in the deprivation of liberty process, providing the relevant person with representation and support that is independent of the commissioners and providers of the services they are receiving.

### 4.1 Who can be a Relevant Persons Representative?

To be eligible as a RPR, a person must be:

- 18 years of age or over
- willing to be appointed, and
- able to keep in contact with the relevant person.

The person must not be:

- prevented by ill health from carrying out the role of representative
- financially interested in the relevant person’s Managing Authority
- a close relative of a person who is financially interested in the Care Home or the Hospital
- if the person is deprived of liberty in a Care Home or Hospital, employed by, or providing services to, that Care Home or Hospital
- employed to work in the relevant person’s Supervisory Body in a role that is, or could be, related to the relevant person’s case.

The *appointment* of an RPR is in addition to, and does not affect, any appointment of an attorney or deputy. The *functions* of the RPR are in addition to, and do not affect, the authority of any attorney, the powers of any deputy or any powers of the court.

There is no presumption that a Relevant Persons Representative should be the same as the person who would be their nearest relative for the purposes of the Mental Health Act 1983, even where the person is likely to be subject simultaneously to an authorisation under this procedure and a provision of the Mental Health Act 1983.

### 4.2 The Managing Authority’s responsibilities toward the Relevant Persons Representative

Immediately after a Standard Authorisation has been issued, the Managing Authority must take all practical and appropriate steps to ensure that the relevant person and the RPR understand:

- the effect of the authorisation
- their right to request a review
- the formal and informal complaints procedures that are available to them
- their right to make an application to the Court of Protection to seek a variation or termination of the authorisation, and
- their right to request the support of an IMCA.
In providing information to the relevant person and their representative, the Managing Authority should take account of the communication and language needs of both the relevant person and their representative.

Provision of information should be seen as an ongoing responsibility rather than a one-off activity.

5. The Independent Mental Capacity Advocate (IMCA)

In line with the provisions of the Mental Capacity Act 2005, anyone who does not have family or friends who can be consulted will have an Independent Mental Capacity Advocate (IMCA) instructed to support and represent them during the assessment process.

Section 39A IMCA

Section 39A of the Mental Capacity Act 2005 applies where an Urgent Authorisation is given or a Standard Authorisation is requested and there is not an existing authorisation in place. It also applies where an assessment is being undertaken to decide whether there is an unauthorised deprivation of liberty. The Managing Authority must ascertain whether there is anybody, other than people engaged in providing care or treatment in a professional capacity or for remuneration, whom it would be appropriate to consult in determining what would be in the best interest of the relevant person which the authorisation/assessment relates to. If there is not, the Managing Authority must notify the Supervisory Body who will instruct an IMCA to represent the person (Form 30- IMCA referral form)

An IMCA instructed at this stage of the DoLS process has additional rights and responsibilities compared to an IMCA who is instructed under the more general provisions of the Mental Capacity Act 2005.

IMCAs in this context have the right to:

- Give information or make submissions to assessors which assessors must take into account in carrying out their assessments
- Receive any copies of any deprivation of liberty assessments that are undertaken from the Supervisory Body
- Receive a copy of the outcome of the authorisation of deprivation of liberty, if authorised.
- Be notified by the Supervisory Body if they are unable to authorise an application for a deprivation of liberty.
- Apply to the Court of Protection for permission to take the relevant persons case to the Court in connection with a matter relating to the giving or refusal of a deprivation of liberty by a Supervisory Body.

Section 39C IMCA

Section 39C provides for the appointment of an IMCA if a RPR’s appointment ends while an authorisation is in force and the Managing Authority are satisfied there is nobody else appropriate to consult in determining the relevant persons best interest. Again, the Managing Authority must notify the Supervisory Body that this is the case, and the Supervisory Body must then instruct an IMCA to represent the
relevant person (Form 30). The IMCAs role in this case comes to an end upon the appointment of a new RPR.

**Section 39D IMCA**
Section 39D provides for the instruction of an IMCA by the Supervisory Body where the person does not have a paid RPR and:

- The relevant person or their RPR request that IMCA is instructed, by the Supervisory Body, to help them, or
- The Supervisory Body believes that instructing an IMCA will help to ensure that the relevant person’s rights are protected.

**Additional information**

Differences of opinion between an IMCA and any Assessor should ideally be resolved while the assessment is still in progress. Where disagreements cannot be resolved, the Supervisory Body should be informed of the conflict by the Best Interest Assessor, IMCA or Safeguarding/DoLS Co-ordinator before the assessment is finalised. The nominated Supervisory Body signatory should then consider what action might be appropriate.

Wherever possible, differences of opinion should be resolved informally in order to keep to a minimum the number of occasions on which it is necessary for an IMCA to make an application to the Court of Protection.

5.1 **Instructing a section 39C IMCA to act when there is no Relevant Persons Representative available.**

One of the key safeguards for people who are deprived of their liberty under the deprivation of liberty safeguards is the persons representative. The expectation is that this will be a family member who is both willing and able to do this. Where there is no family or friend who can take on this role, the Supervisory Body has to appoint someone who could be paid to undertake the role. The Managing Authority must notify the Supervisory Body, who must instruct an IMCA to represent the relevant person until a new representative is appointed.

The Supervisory Body may instruct a 39C IMCA to fill any gaps between the appointment of the person’s representative in order to avoid the person going for long periods without someone in this role. For example, a 39C IMCA could be instructed to cover the gap between sudden death of a previous representative and the appointment of a paid representative. The Safeguarding/DoLS Co-ordinator should instruct the DoLS Administrator to complete the standard form 30 specifying the need for a 39C IMCA which will be signed by the Supervisory Body and sent accordingly.
5.2 Instructing a section 39D IMCA to act during a Standard Authorisation for a deprivation of liberty to support the relevant person or their (unpaid) representative

39D IMCAs are only available when a Standard Authorisation is in place and the person has an unpaid Relevant Person’s Representative (paid representatives are expected to understand their role and to provide the appropriate support). The intention of a 39D IMCA is to provide extra support to the relevant person or a family member or friend acting as their representative if they need it, to make use of the review of Court of Protection safeguards. Where a person has an unpaid representative, a 39D IMCA must be instructed if:

- The relevant person asks the Supervisory Body for the support of a 39D IMCA.
- Their representative asks the Supervisory Body for support
- The Supervisory Body believes that the person or their representative would benefit from support.

The Safeguarding/DoLS Coordinator should instruct the DoLS Administrator to complete the standard form 30 specifying the need for a 39D IMCA which will be signed by the Supervisory Body and sent accordingly.

In any deprivation of liberty application, only one IMCA will be appointed.

The role of the IMCA is to explain the authorisation to them: what it means, why it has been granted, why it is considered that the person meets the criteria for authorisation, how long it will last and how to trigger a review or challenge in the Court of Protection. The IMCA can provide support with a review or with an application to the Court, for example to help the person to communicate their views.

The IMCA will have the right to make submissions to the Supervisory Body on the question of whether a qualifying requirement is reviewable or to give information, or make submissions, to any assessor carrying out a review assessment. Both the relevant person and their representative must be told about the IMCA service and how to request an IMCA.

An IMCA must be instructed if the person or their representative requests this provision. A request may be made more than once during the period of the authorisation. For example, help may be asked for at the start of the authorisation and then again later in order to request a review.

In addition, if the Supervisory Body has reason to believe that the review and Deprivation of Liberty 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 a representative who needs support with communication, it should consider whether an IMCA is needed.
At any time when the relevant person does not have a representative, it will be particularly important for Supervisory Bodies to consider exercising their discretion to carry out a review if there is any significant change in the person’s circumstances.

In LBRuT the IMCA Service is currently provided by Kingston Advocacy Group. KAG can be contacted at the following address and contact numbers:

KAG Advocacy
Siddeley House
50 Canbury Park Rd
Kingston Upon Thames
KT2 6LX
Tel: 0782 554 9191
Email: imca@kag.org.uk
Web: www.kag.org.uk

A friend or family member is not considered to be acting in a professional capacity simply because they have been appointed as the person’s representative for a previous application.

6. Reviews

The Managing Authority must set out in the care plan clear roles and responsibilities for monitoring the DoLS and confirm under what circumstances a review is necessary. For example, if a person’s condition is changing frequently, then their situation should be reviewed more frequently. In addition, the Supervisory Body must carry out a review if requested to do so by the relevant person or their representative, or the Managing Authority may also carry out a review at any other time. There are no restrictions on when a review can be requested.

In general, the grounds for requesting a review are that:
- The relevant person’s circumstances have changed from those which formed the basis of the original application.
- The relevant person is ineligible because they now object to receiving mental health treatment in hospital in which case the Mental Health Act 1983 should be considered.
- There has been a change in the relevant person’s situation and, because of the change, it would be appropriate to vary the authorisation.

If a care home or hospital identifies that deprivation of liberty is no longer necessary then they must end it immediately, by adjustment of the care regime or whatever other change is appropriate.

The managing authority should apply to the supervisory body to apply to discharge the authorisation. While this review is happening, the person concerned should no longer be subject to deprivation of liberty.

The Supervisory Body must carry out a review if one is requested by the relevant person, by their representative or by the Managing Authority. The following letters and form should be used by the identified person if a review is requested;

- DoLS Letter 3 – Review requested by the Relevant Person
- DoLS Letter 4 – Review requested by the Relevant Persons Representative
- DoLS Form 19 – Review requested by the managing authority

The Supervisory Body may itself decide to carry out a review without any request being made for one. If it decides to hold a review without a request being made it should use DoLS Form 20 – Supervisory Body Notifies Relevant Interested Parties.

This form is used to give notice that a review is to be carried out, whether because a request has been received or because the Supervisory Body itself has decided to conduct one. This form is to be issued by the Authorised Signatory but they may delegate this responsibility to another appropriate person in certain circumstances.

Having given notice that a review is to be held, the Supervisory Body must then decide whether any of the qualifying assessments are reviewable. In essence what must be decided is whether evidence exists that the relevant person may no longer meet the criteria for being deprived of their liberty under the Mental Capacity Act 2005. In general a review should be carried out if it is possible that the relevant person no longer meets one or more qualifying assessments.

With one exception, the Supervisory Body must arrange for fresh assessments to be carried out for each qualifying requirements that appears to be reviewable. The exception is where it has been decided that the Best Interest requirement is reviewable on the sole ground that there has been a change in the person’s case as a result of which the conditions of the Standard Authorisation need varying. This process would need to be undertaken by a commissioned Best Interest Assessor and signed off by the Authorised Signatory for the Supervisory Body. This may not necessarily be the same Best Interest Assessor who undertook the original assessments.
DoLS Form 21 – Supervisory Body Records Its Decision as to whether any Qualifying Requirements are Reviewable.

Where the Supervisory Body arranges fresh assessments relating to one or more of the qualifying requirements, these assessments are called “Review Assessments.” However the assessments are recorded using the same forms that are used to assess a relevant person following a request for a new Standard Authorisation. These forms are:

DoLS Form 5 – Age Assessment
DoLS Form 6 – Mental Health Assessment
DoLS Form 7 – Mental Capacity Assessment
DoLS Form 8 – No Refusals Assessment
DoLS Form 9 – Eligibility Assessment
DoLS Form 10 – Best Interests Assessment

The Supervisory Body should record its decision following the receipt of the review assessments. This would need to be completed by the nominated person for the Supervisory Body. DoLS Form 22 – Supervisory Body’s Decision Following Receipt of Review Assessments

Any termination of the Standard Authorisation should be recorded by the Authorised Signatory for the Supervisory Body using DoLS Form 23 – Supervisory Body Gives Notice that a Standard Authorisation has Ceased To Be In Force.

The reasons why a Standard Authorisation will cease to be in force are that:

- The Care Home or Hospital gave notice to the supervisory body that the relevant person has ceased to meet the eligibility requirement. 28 days have now elapsed since the notice was given without the suspension having been lifted.
- The Standard Authorisation has expired.
- A review of the Standard Authorisation has been completed and the review concluded that the relevant person no longer meets the requirements for being deprived of their liberty under the Mental Capacity Act 2005.
- Following a change in the place where the person was deprived of liberty, the Standard Authorisation has been replaced by a new Standard Authorisation and has therefore ceased to exist.
- The Court of Protection or another applicable court has made an order that the standard authorisation is invalid or that it shall no longer have effect.
- The relevant person has died.

Once a Standard Authorisation comes to an end, the Managing Authority cannot lawfully continue to deprive a person of their liberty. If they consider that a person will still need to be deprived of liberty after the authorisation ends, they need to request a further application to begin immediately after the expiry of the existing one, recognising that the process to complete a further authorisation can take up to 21 days.
Once commenced, the process for re-application follows the same process for requesting the previous authorisation, with the same assessment processes needing to take place. However, the need to instruct an IMCA will not usually arise because most people at this stage will already have a person appointed to represent their interests.

If a relevant person dies whilst subject to a DoLS authorisation, it is deemed good practice to notify the local coroner’s office which should be done by the Supervisory Body. It is always preferable to report the death as no harm can come from this course of action, whereas not reporting the death can be problematic.3

7. Record Keeping

It is essential that full records of assessments and decision making, including the identity or identities of decision maker(s) are kept and that the relevant forms are retained on the recording systems used by the Supervisory Bodies recording systems and on the records of the Managing Authorities. This will also include those forms which were completed and where the application for a deprivation of liberty was not authorised.

The current records management system used by the Local Authority is All DoLS information will be recorded on Frameworki (FWi).

Where the relevant person is accommodated within a Care Home the Best Interest Assessor will be required to input a summary of the details of the deprivation of liberty process on to FWi. In the event that the Best Interest Assessor is employed by either the CCG or is an Independent Assessor, then these notes will need to be forwarded in paper form to the DoLS Administrator who will input these on to FWi.

8. Monitoring and Quality Assurance

The Safeguarding/DoLS Coordinator will be responsible for ensuring that:

- All request forms are completed adequately by Managing Authorities
- All required fields on assessment forms are completed

The Supervisory Body will be responsible for ensuring:

- BIAs are adequately trained to undertake their role
- BIAs are given adequate training to facilitate undertaking assessments under DoLS
- Assessments undertaken by BIA’s and Mental Health Assessors are of a suitable quality
- BIA warrants are maintained and renewed accordingly
- Mental Health Assessors hold a current CRB check

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3 Department of Health, 2011, ‘Reporting the death of a person subject to an authorisation under the Mental Capacity Act Deprivation of Liberty Safeguards
Any recommendations / conditions stipulated by the BIA are adhered to.

The Supervisory Body for both LBRuT will formally meet as a Board every 2 months.

The DoLS Administrator and Safeguarding/DoLS Co-ordinator will prepare a report to go the board which will include:

- Data collated against the ‘Proposed aggregate level data collection form’ from the Department of Health.
- Any issues arising throughout the DoLS process
- Feedback from BIAs and Mental Health Assessors
- Feedback from Managing Authorities
- Updates from the Department of Health

APPENDIX 8 – Draft Data Collection (DoH)

9. Additional DoLS Forms

Within this document the forms that are required to be completed have been highlighted where applicable in the relevant section so that the process for their completion can be easily followed. Where this has not been possible, or would have caused confusion by doing, so the remaining forms which could be used as part of this process are included within this section with a brief explanation of their usage:

**DOLLS Form 14 – Suspending a Standard Authorisation**

The effect of DOLS Form 14 is that the existing authorisation no longer authorise the Managing Authority to deprive the relevant person of their liberty.

**DOLS Form 15 – Notice That a Suspension Has Been Lifted**

Used when the Managing Authority identify that the relevant person becomes eligible to be deprived of their liberty within 28 days of DOLS Form 14 being issued. Completed by the Managing Authority and forwarded to the DoLS Administrator.
### APPENDIX 1 – DoLS FORMS

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<td>REQUEST FOR EXTENSION OF URGENT AUTHORIZATION</td>
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<td>14</td>
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<td>MENTAL HEALTH ASSESSOR REFERRAL FORM</td>
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<td><strong>APPENDIX 2 – Overview of Richmond DoLS Process</strong></td>
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Deprivation of Liberty Safeguards – Standard / Urgent Authorisations

Request from Managing Authority

Receipt of request sent to Managing Authority

DoLS Administrator

Identify whether standard or enhanced Authorisation

Lead BIA

Identify whether ADASS Interagency protocol will be required

Engage IMCA if necessary

Allocation to appropriate BIA

ASSESSMENT
BIA will co-ordinate all assessments and update on FWi

NEGATIVE

POSITIVE

Supervisory Body

DoLS Authorisation

Identify Person Representative

Commission Person Representative if necessary

All paperwork to be sent to DoLS Admin to update on FWi

NO DoLS Authorisation

Identify further action required if any

Where BIA does NOT have access to FWi all assessments must be passed to DoLS Admin

The entire process must take no longer than 7 days for URGENT and 21 days for STANDARD authorisations. Priority given to URGENT DoLS requests requests
Request from Managing Authority

Receipt of request sent to Managing Authority

DoLS Administrator

Identify whether standard or enhanced Authorisation

Lead BIA

Identify whether ADASS Interagency protocol will be required

Engage IMCA if necessary

Allocation to appropriate BIA

ASSESSMENT
BIA will co-ordinate all assessments and update on FWi

NEGATIVE

POSITIVE

Supervisory Body

DoLS Authorisation

Identify Person Representative

Commission Person Representative if necessary

Where BIA does NOT have access to FWi all assessments must be passed to DoLS Admin

NO DoLS Authorisation

Identify further action required if any

All paperwork to be sent to DoLS Admin to update on FWi

DoLS Admin to send out copies of all relevant paperwork to identified individuals

The entire process must take no longer than 7 days for URGENT and 21 days for STANDARD authorisations. Priority given to URGENT DoLS requests requests

APPENDIX 3 – Flowchart for DoLS Administrator
APPENDIX 4 – Flowchart for Supervisory Body
Standard Authorisation Process – Supervisory Body

Request from Managing Authority received

Case passed to Lead BIA

Allocated to appropriate BIA to coordinate all assessments.

BIA’s will:
* Commission S12 Doctor
* Undertake / Coordinate all Assessments
* Ensure all Assessments given to the Supervisory Body

For BIA’s not on FWi: the DoLS Admin will:
* receive and input all relevant info on FWi
* upload documents
* pass assessments to Supervisory Body

All assessments are given to SB

One or more assessments indicate individual is NOT eligible for DoLS

SB completes Form 12

SB identifies whether Person Representative is identified

YES

Pass back to BIA

NO

BIA instruct IMCA (Form 24 & 30)

BIA informs SB once Form 31 is received

SB Completes Form 25

All completed forms are passed back to DoLS Admin to input into FWi, upload and send copies to all relevant individuals indentified

All assessments indicate individual IS eligible for DoLS

SB completes Form 25

SB identifies whether Person Representative is identified

YES

NO

Pass back to BIA

BIA instruct IMCA (Form 24 & 30)

BIA informs SB once Form 31 is received

SB Completes Form 25

All completed forms are passed back to DoLS Admin to input into FWi, upload and send copies to all relevant individuals indentified

APPENDIX 5 – Flowchart for Safeguarding/DoLS Coordinator
Request from Managing Authority received and logged by DoLS Admin

Forms passed to Lead BIA by e-mail and allocated on FWi

Allocate appropriate BIA to coordinate all assessments. Name of BIA and date to be recorded on FWi

Referral form to be sent to BIA (Form 28)

If necessary instruct an IMCA. Referral Form 24 to be completed and uploaded on to FWi

BIA’s will:
*Commission S12 Doctor
*Undertake / Coordinate all Assessments
*Ensure all Assessments given to the Supervisory Body

Supervisory Body will complete relevant forms and pass back to DoLS Admin

If individual is in authority outside of London the ADASS Inter-agency protocol must be followed

Liaise with host authority to commission assessments / IMCA

For BIA’s not on FWi: the DoLS Admin will:
*receive and input all relevant info on Fwi
*upload documents
*pass assessments to Supervisory Body

Upload Forms: 6, 7, 8, 9, 10, 24

Supervisory Body will complete relevant forms and pass back to DoLS Admin

APPENDIX 6 – Flowchart for Third Party Applications
Third Party Requests for DoLS

Request from anyone other than Managing Authority

Log on FWI:
* Basic Details
* Date of receipt
* Type of request

Upload any written correspondence

Check whether request is in or out of borough (OOB)

E-mail Lead BIA copy of request and inform if SU is OOB

Lead BIA will recommend to SB on action required

SB make decision and record on Form 16

Assessment Required

SB passes to Lead BIA

NFA

Lead BIA contacts managing authority asking for an authorisation request within an agreed timescale

Lead BIA checks whether this has been complied with

NO

Allocate to appropriate BIA

YES

NFA

BIA undertakes assessor report (Form 17) & passes to SB

SB completes Form 18 and passes back to DoLS Admin

DoLS Admin sends copy of Form 18 & letter to:
* Managing Authority
* Service User
* Any IMCA involved

APPENDIX 7 – Framework Recording Processes

Deprivation of Liberty Framework Process
People

DoLS Admin: Check if person is known. If not, create person. Check/ add following details:

- Date of birth
- Gender
- Ethnicity and sub-ethnicity
- Service user group and sub group
- Religion

Uploading Documents

- All e-mails to be saved as .msg format to save the attachment.
- Naming convention for uploaded correspondence should be 20090326Form1E-mail.

<table>
<thead>
<tr>
<th>Standard Authorisation Process</th>
<th>What</th>
<th>Who</th>
</tr>
</thead>
<tbody>
<tr>
<td>Request comes in from managing authority.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Start Deprivation of Liberty Request for Authorisation episode</td>
<td></td>
<td>DoLs admin</td>
</tr>
<tr>
<td>Upload forms</td>
<td></td>
<td>DoLs admin</td>
</tr>
<tr>
<td>Record date request received</td>
<td></td>
<td>DoLs admin</td>
</tr>
<tr>
<td>Fax receipt to managing authority and upload.</td>
<td></td>
<td>DoLs admin</td>
</tr>
<tr>
<td>Record date receipt sent to managing authority</td>
<td></td>
<td>DoLs admin</td>
</tr>
<tr>
<td>Inform lead BIA of request by e-mail. Upload.</td>
<td></td>
<td>DoLs admin</td>
</tr>
<tr>
<td>Completes referral form. E-mails form to BIA, cc. DoLS admin.</td>
<td></td>
<td>DoLs admin</td>
</tr>
<tr>
<td>Uploads e-mail and referral form. Date recorded.</td>
<td></td>
<td>DoLs admin</td>
</tr>
<tr>
<td>Case allocated to BIA (by worker relationships – Best Interest Assessor).</td>
<td>If BIA is not on Framework, ask Framework Support to add as a worker.</td>
<td>Lead BIA</td>
</tr>
<tr>
<td>IMCA instructed. Upload any documentation. Record date and agency instructed.</td>
<td></td>
<td>Lead BIA</td>
</tr>
<tr>
<td>Allocates DoLS Request for Authorisation episode to BIA</td>
<td></td>
<td>Lead BIA</td>
</tr>
<tr>
<td>Commissions Section 12 doctor. Record date and name of doctor.</td>
<td></td>
<td>BIA</td>
</tr>
<tr>
<td>All assessments uploaded. Date and outcome for each recorded (each within 24 hours of receipt)</td>
<td></td>
<td>BIA</td>
</tr>
<tr>
<td>IMCA report upload (if applicable)</td>
<td></td>
<td>BIA</td>
</tr>
<tr>
<td>Informs DoLs admin assessments are completed by e-mail.</td>
<td></td>
<td>BIA</td>
</tr>
<tr>
<td>Assigns Deprivation of Liberty Request of Authorisation episode to themselves.</td>
<td></td>
<td>DoLs admin</td>
</tr>
<tr>
<td>Gives copies of all assessments to Supervisory Body (SB). Records date passed to SB.</td>
<td></td>
<td>DoLs admin</td>
</tr>
<tr>
<td>If authorisation declined: complete Form 13 and e-mails to DoLs admin</td>
<td>If declined</td>
<td>SB</td>
</tr>
<tr>
<td>Record date Form 13 completed and upload form.</td>
<td>If declined</td>
<td>DoLs admin</td>
</tr>
<tr>
<td>Form 13 and letter sent to relevant parties. Date and who sent to recorded. Correspondence uploaded.</td>
<td>If declined</td>
<td>DoLs admin</td>
</tr>
<tr>
<td>What</td>
<td>Who</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------</td>
<td></td>
</tr>
<tr>
<td>Record outcome of ‘Deprivation of Liberty Request Declined’.</td>
<td>If declined</td>
<td></td>
</tr>
<tr>
<td>Form 12 and 25 completed.</td>
<td>If eligible</td>
<td></td>
</tr>
<tr>
<td>Scanned and uploaded. Commencement date, expiry date, purpose given and review date (if applicable) recorded. Date sent to DoLS admin by SB recorded.</td>
<td>If eligible</td>
<td></td>
</tr>
<tr>
<td>Record legal status of ‘Deprivation of Liberty Authorised’ with a start date of the commencement date on form 12.</td>
<td>If eligible</td>
<td></td>
</tr>
<tr>
<td>De-allocate case from BIA</td>
<td>DoLS admin</td>
<td></td>
</tr>
<tr>
<td>Record Outcome of either ‘DoLS expiry’ or ‘DoLS Review’</td>
<td>If eligible</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Deprivation of Liberty – Notice of Expiry</th>
<th>Who</th>
</tr>
</thead>
<tbody>
<tr>
<td>What</td>
<td>Who</td>
</tr>
<tr>
<td>Report run to identify all those with an expiry date in the following month.</td>
<td>DoLS admin</td>
</tr>
<tr>
<td>Report sent to Supervisory Body (SB).</td>
<td>DoLS admin</td>
</tr>
<tr>
<td>Completes form 23 for each person on report. Returns forms to DoLS admin.</td>
<td>SB</td>
</tr>
<tr>
<td>Send to Managing authority with covering documentation.</td>
<td>DoLS admin</td>
</tr>
<tr>
<td>Scan and upload forms. Record date sent to Managing authority.</td>
<td>DoLS admin</td>
</tr>
<tr>
<td>End Legal Status using expiry date.</td>
<td>DoLS admin</td>
</tr>
<tr>
<td>Close IMCA involvement to expiry date.</td>
<td>DoLS admin</td>
</tr>
<tr>
<td>Close Personal representative involvement to expiry date.</td>
<td>DoLS admin</td>
</tr>
<tr>
<td>Finish episode with outcome of ‘Deprivation of Liberty Expired’.</td>
<td>DoLS admin</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Unauthorised Deprivation of Liberty Request</th>
<th>Who</th>
</tr>
</thead>
<tbody>
<tr>
<td>What</td>
<td>Who</td>
</tr>
<tr>
<td>Request come in.</td>
<td>DoLS admin</td>
</tr>
<tr>
<td>Start Unauthorised Deprivation of Liberty Request from ‘People’, ‘New Episode’.</td>
<td>DoLS admin</td>
</tr>
<tr>
<td>Upload documentation or record phone call in the free text space in the questionnaire.</td>
<td>DoLS admin</td>
</tr>
<tr>
<td>Record date received and who the request was from.</td>
<td>DoLS admin</td>
</tr>
<tr>
<td>E-mail Lead BIA to inform of request. Upload e-mail.</td>
<td>DoLS admin</td>
</tr>
<tr>
<td>Lead BIA completes Form 16.</td>
<td>Lead BIA</td>
</tr>
<tr>
<td>Send Form 16 to SB by e-mail. Upload e-mail and record date sent.</td>
<td>Lead BIA</td>
</tr>
<tr>
<td>Decision made and Form 16 returned to Lead BIA and DoLS admin.</td>
<td>SB</td>
</tr>
<tr>
<td>Record date and type of decision.</td>
<td>DoLS admin</td>
</tr>
<tr>
<td>Record date and who the form was sent to.</td>
<td>DoLS admin</td>
</tr>
<tr>
<td>If ‘No Further Action’ go to the outcome screen and choose ‘No Deprivation of Liberty’.</td>
<td>If NFA</td>
</tr>
<tr>
<td>If ‘Assessment Required’ notify Managing Authority to request a standard authorisation request. Record date and who contacted and date by which request to be</td>
<td>If ‘Assessment Required’</td>
</tr>
<tr>
<td></td>
<td>Lead BIA</td>
</tr>
<tr>
<td>What</td>
<td>Who</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>If Standard request received by the date agreed, go to outcomes screen and choose ‘Deprivation of Liberty Standard Request’.</td>
<td>If request received Lead BIA</td>
</tr>
<tr>
<td>Allocate to BIA via Worker relationships. Record date of allocation and name of BIA in questionnaire. Assign episode to BIA.</td>
<td>If request not received Lead BIA</td>
</tr>
<tr>
<td>IMCA instructed. Record date and agency instructed.</td>
<td>BIA</td>
</tr>
<tr>
<td>Completes assessors report and uploads. Record date of assessment Send to SB.</td>
<td>BIA</td>
</tr>
<tr>
<td>Returns assessor’s report to DoLS admin and BIA.</td>
<td>SB</td>
</tr>
<tr>
<td>Record date of decision and outcome of assessment.</td>
<td>DoLS admin</td>
</tr>
<tr>
<td>Send decision letter and form to interested parties. Record date and who sent to.</td>
<td>DoLS admin</td>
</tr>
<tr>
<td>If NOT being deprived of Liberty choose outcome of ‘No Deprivation of Liberty’.</td>
<td>NOT being deprived DoLS admin</td>
</tr>
<tr>
<td>If BEING deprived of liberty, record date passed to lead BIA and date Managing authority Informed. Upload any documentation. Choose outcome of ‘Deprivation of Liberty Standard Request’.</td>
<td>BEING deprived. DoLS admin</td>
</tr>
</tbody>
</table>

**Unauthorised Deprivation of Liberty Request**

**APPENDIX 8 – Draft Data Collection (DoH)**

**Proposed aggregate level data collection form.**

Mental Capacity Act Deprivation of Liberties Safeguards
Data collation sheet

<table>
<thead>
<tr>
<th>1 - Supervisory body</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2 - Data collection period</td>
<td>01 Apr – 30 Jun / 01 Jul – 30 Sep / 01 Oct – 31 Dec / 01 Jan – 31 Mar</td>
</tr>
</tbody>
</table>
### 3 - Age group

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Total per grouping within the quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>18 - 64</td>
<td></td>
</tr>
<tr>
<td>65 - 74</td>
<td></td>
</tr>
<tr>
<td>75 - 84</td>
<td></td>
</tr>
<tr>
<td>85 +</td>
<td></td>
</tr>
</tbody>
</table>

### 4 - Gender

<table>
<thead>
<tr>
<th>Gender</th>
<th>Total per grouping within the quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td></td>
</tr>
</tbody>
</table>

### 5 - Ethnic origin

<table>
<thead>
<tr>
<th>Ethnic Origin</th>
<th>Total per grouping within the quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>A: British (White)</td>
<td></td>
</tr>
<tr>
<td>B: Irish (White)</td>
<td></td>
</tr>
<tr>
<td>C: Any Other White Background (White)</td>
<td>To include Travellers of Irish heritage and Gypsy/Roma</td>
</tr>
<tr>
<td>D: White and Black Caribbean (Mixed)</td>
<td></td>
</tr>
<tr>
<td>E: White and Black African (Mixed)</td>
<td></td>
</tr>
<tr>
<td>F: White and Asian (Mixed)</td>
<td></td>
</tr>
<tr>
<td>G: Any Other Mixed Background (Mixed)</td>
<td></td>
</tr>
<tr>
<td>H: Indian (Asian or Asian British)</td>
<td></td>
</tr>
<tr>
<td>J: Pakistani (Asian or Asian British)</td>
<td></td>
</tr>
<tr>
<td>K: Bangladeshi (Asian or Asian British)</td>
<td></td>
</tr>
<tr>
<td>L: Any Other Asian Background (Asian or Asian British)</td>
<td></td>
</tr>
<tr>
<td>M: Caribbean (Black or Black British)</td>
<td></td>
</tr>
<tr>
<td>N: African (Black or Black British)</td>
<td></td>
</tr>
<tr>
<td>P: Any Other Black Background (Black or Black British)</td>
<td></td>
</tr>
<tr>
<td>R: Chinese (Other Ethnic Groups)</td>
<td></td>
</tr>
<tr>
<td>S: Any Other Ethnic Group</td>
<td></td>
</tr>
<tr>
<td>Z: Not Stated</td>
<td></td>
</tr>
</tbody>
</table>

To include cases in which the person has refused to divulge their ethnic origin or where their ethnic origin is not yet known.

### 6 - Religion or belief

<table>
<thead>
<tr>
<th>Religion or Belief</th>
<th>Total per grouping within the quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>1: None</td>
<td></td>
</tr>
<tr>
<td>2: Christian</td>
<td></td>
</tr>
<tr>
<td>3: Buddhist</td>
<td></td>
</tr>
<tr>
<td>4: Hindu</td>
<td></td>
</tr>
<tr>
<td>5: Jewish</td>
<td></td>
</tr>
<tr>
<td>6: Muslim</td>
<td></td>
</tr>
<tr>
<td>7: Sikh</td>
<td></td>
</tr>
<tr>
<td>8: any other religion</td>
<td></td>
</tr>
<tr>
<td>9: not stated</td>
<td></td>
</tr>
</tbody>
</table>

### 7 - Sexual orientation

<table>
<thead>
<tr>
<th>Sexual Orientation</th>
<th>Total per grouping within the quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>1: Heterosexual</td>
<td></td>
</tr>
<tr>
<td>2: Lesbian or gay</td>
<td></td>
</tr>
<tr>
<td>3: Bisexual</td>
<td></td>
</tr>
<tr>
<td>4: Other</td>
<td></td>
</tr>
<tr>
<td>5: Prefer not to say</td>
<td></td>
</tr>
<tr>
<td>6: Not known</td>
<td></td>
</tr>
</tbody>
</table>
### 8 - Disability

<table>
<thead>
<tr>
<th>Description</th>
<th>Total per grouping within the quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>1: Physical disability, frailty and / or sensory impairment</td>
<td>Authorisations accepted</td>
</tr>
</tbody>
</table>

**Please identify which of the following apply:**

- 1.1: Physical disability, frailty and/or temporary illness
- 1.2: Hearing impairment
- 1.3: Visual impairment
- 1.4: Dual sensory loss
- 2.1: Mental health (total)
- 2.2: Of which – dementia
- 3: Learning disability

### 9 - Reason for declining authorisation

<table>
<thead>
<tr>
<th>Description</th>
<th>Total per grouping within the quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>1: Age requirement not met</td>
<td></td>
</tr>
<tr>
<td>2: Mental health requirement not met</td>
<td></td>
</tr>
<tr>
<td>3: Mental capacity requirement not met</td>
<td></td>
</tr>
<tr>
<td>4: No refusals requirement not met</td>
<td></td>
</tr>
<tr>
<td>5: Eligibility requirement not met</td>
<td></td>
</tr>
<tr>
<td>6: Best interests requirement not met</td>
<td></td>
</tr>
</tbody>
</table>

### 10 – Total number of people currently subject to a standard authorisation (irrespective of when the authorisation was granted) as at the quarter end date: 30th June, 30th September, 31st December or 31st March.

### 11 - Lengths of authorisations (calendar days)

<table>
<thead>
<tr>
<th>Description</th>
<th>Total per grouping within the quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>1: 0 to 90 days</td>
<td></td>
</tr>
<tr>
<td>2: 91 to 180 days</td>
<td></td>
</tr>
<tr>
<td>3: 181 to 270 days</td>
<td></td>
</tr>
<tr>
<td>4: 271 to 365 days</td>
<td></td>
</tr>
<tr>
<td>5: 365+ days</td>
<td></td>
</tr>
</tbody>
</table>

### 12 - Instigator of reviews conducted

<table>
<thead>
<tr>
<th>Description</th>
<th>Total per grouping within the quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>1: The person</td>
<td></td>
</tr>
<tr>
<td>2: Their representative</td>
<td></td>
</tr>
<tr>
<td>3: The managing authority</td>
<td></td>
</tr>
</tbody>
</table>

### 13 - Numbers of third party authorisation applications being made

### 14 - Number of third party applications that lead to full assessments

### 15 - Numbers of cases where authorisation is not given but the best interests assessor advises that deprivation of liberty is actually occurring