Deprivation of Liberty Safeguards (DOLS)

Deprivation of Liberty Procedures for Supervisory Bodies

To be read in conjunction with the Deprivation of Liberty Safeguards Code of Practice

The Mental Capacity Act Deprivation Of liberty Safeguards (2005) Guidance and Procedures.

These procedures are written to support the Code of Practice and to provide some local interpretation and guidance.

Introduction

The Deprivation of Liberty Safeguards (DoLS) were produced in response to the European Court of Human Rights judgement in the Bournewood case (HL v UK) October 2004. This highlighted that additional safeguards were needed for people who lack capacity and who might be deprived of their liberty.

The Government committed to close this "Bournewood gap" and amended the Mental Capacity Act 2005 to introduce the Deprivation of Liberty Safeguards (DoLS). The DoLS strengthen the rights of hospital patients and care home residents, as well as ensuring compliance with the European Convention on Human Rights (ECHR).

People who suffer from a disorder or disability of the mind and who lack the mental capacity to consent to the care or treatment they need, should be cared for in the least restrictive way without depriving them of their liberty.

In some cases, some people may need to be deprived of their liberty in order to receive treatment or care which is necessary in their best interests to protect them from harm. The safeguards have been introduced to provide a legal process and suitable protection in those circumstances where deprivation of liberty appears to be unavoidable

Aims

The aim of the Deprivation of Liberty Multi Agency Guidance is to clearly describe Sandwell's process for DoLS.

The safeguards aim to:

- Ensure that people can be given the care and support they need in the least restrictive environment.
- Prevent arbitrary decisions that deprive people of their liberty.
- Provide safeguards for vulnerable people who lack capacity.
- Provide people with rights of challenge against unlawful detention.

This Guidance sets the strategic framework and application of the deprivation of liberty safeguards (DoLS) across Sandwell.

Legal context and ethos

What is a deprivation of liberty is a matter of judgement in each particular case. There is no easy definition. It is important to note that the distinction between deprivation of and restriction of liberty is *one of degree or intensity and not one of nature or substance.* This means it is *how often something is*

done and to what extent rather than the thing itself, which determines whether it may be a deprivation rather than a restriction.

It will be the factors in the specific situation of the person concerned which provide the ‘degree’ or ‘intensity’ to result in a deprivation of liberty. In practice, this can relate to:

- The type of care being provided.
- How long the situation lasts.
- Its effects on the person.
- The way in which particular situation came about.

From case law to date, the following are factors which may indicate a deprivation. The Deprivation of Liberty Code of Practice must always be referred to for more detail.

- Restraint is used including sedation to admit a person who is resisting.
- 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 is taken that the person will not be released into the care of others or permitted to live elsewhere unless the staff feel it is appropriate.
- A request by carers for the person to be released into 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.

The safeguards provide a framework for approving the deprivation of liberty for people over the age of 18 who lack the capacity to consent to treatment or care in either a hospital or care home that, in their own best interests, can only be provided in circumstances that amount to a deprivation of liberty.

Relationship to the Mental Capacity Act

The Mental Capacity Act 2005 (MCA) defines capacity. It provides the legal framework for assessing capacity and making best interests decisions for individuals (generally over 16) who lack the mental capacity to make particular decisions for themselves. It establishes the ability to provide day to day care and treatment for a person who lacks capacity where it is in their best interests. Although it allowed proportionate restraint, it did not allow deprivation of liberty.

The deprivation of liberty safeguards were inserted into the Mental Capacity Act 2005 via the Mental Health Act 2007.

The safeguards are designed to prevent unlawful deprivations of liberty and to provide safeguards for those whose liberty is deprived in order to prevent them from coming to significant harm and to ensure all decisions made on their behalf are in their best interests.

DoLS builds on and incorporates the principles of the MCA in particular the five guiding principles:

- An assumption of capacity.
- Support to make decisions.
- The right to make eccentric or unwise decisions.
- To act in the persons best interests where they lack capacity.
- To identify the least restrictive option.

The ethos of this guidance is to encourage staff to provide care or treatment in the least restrictive way in order to avoid deprivations of liberty. If a deprivation cannot be avoided it should be for no longer than is necessary.

An individual's right to make decisions for themselves must be balanced with their right to be protected from harm if they lack capacity to make decisions to protect themselves.

Relationship to the Mental Health Act 2007 (MHA)

Case law has confirmed the relationship between DoLS and the MHA. In all situations the MHA has primacy and so where it can be used it should be used. The DoLS exist to fill a gap left by the MHA not to provide an alternative to it.

The eligibility assessor must consider whether the person comes within the scope of the MHA. They must also consider whether the main issue is treatment of a mental illness and whether this is treatment the person would object to.

Where the MHA does not apply, DoLS provides another option for compulsory admission to a care home or a hospital where all the criteria is met.

This interaction is a complex area and advice should be sought from the appropriate DoLS Team, in the first instance.

Relationship to Sandwell's Safeguarding Policy and Procedures

The issuing of an appropriate Authorisation is in itself the protection of a vulnerable adult from a form of abuse. The process of agreeing an Authorisation puts the person at the centre of the process, has a system for review clearly laid out and the appointment a Relevant Person's Representative, or an IMCA when necessary, helps keep regular contact with the person.

Adults without capacity who are deprived of their liberty inappropriately, for example without the use of the Mental Health Act 2007, the DoLS or an order of the Court of Protection, are being deprived unlawfully. This is usually classed as an example of physical abuse. It could however, be classed as neglect or discriminatory abuse and a Safeguarding Referral should be made.

When a third party identifies a potentially unlawful deprivation of liberty, the Managing Authority should be contacted and requested to review the persons care and consider a DOLS referral. However, if the Managing Authority does not consider a DOLS is required the Supervisory Body will initiate a DOLS assessment based on the concerns raised by the third party. *(see page 94-96, DOLS, code on practice)*

During the course of a best interests assessment a restriction may be identified which potentially amounts to abuse, as it would not be recommended by the assessor. If the restriction can cease immediately and the level of harm to the individual is low, with no potential implications for other service users, a referral may not be needed. It will be the best interests assessor's assessment as to whether this becomes a Safeguarding Referral.

If there is any concern that the restriction may continue to be used unlawfully then a Safeguarding Referral must be made to assess\monitor the situation.

Relationship to Care Management, Self Funders, Continuing Health Care, nursing and medical care

The DoLS process begins with the Managing Authority. It is anticipated that staff working in either the relevant hospital or care home will identify when a deprivation of liberty is occurring or will need to happen in order to admit a resident or patient.

If a health or social care professional identifies that a DoLS Authorisation is likely to be needed they should alert the Managing Authority. This could be when carrying out an assessment or a review or devising a care or treatment plan.

Care managers and nurses involved with residential placements must be alert to the potential need for a DOLS authorisation at the earliest opportunity in order to avoid the need for an Urgent authorisation except where there are unforeseen circumstances.

The Managing Authority then has a responsibility to request a Standard Authorisation and issue an Urgent Authorisation if it is appropriate to do so.

Alternatively, a social care or healthcare professional may discover an unauthorised deprivation of liberty during the course of their work. They should, in the first instance, mention this to the Managing Authority (who has 24 hours in which to respond) and inform the appropriate DoLS Team who

can ensure the procedure is followed. If the Managing Authority does not apply for an Authorisation within a reasonable period then the staff member can apply directly to the Supervisory body.

Any persistent failure, by a Managing Authority, to apply for DoLS Authorisations will be communicated to Contracts Officers within the appropriate Council, as it is a requirement of care homes' contracts that they adhere to this legislation. The Care Quality Commission will also be notified.

Where possible, requests for Standard Authorisations should identify whether the person has a care manager or named healthcare professional. This will enable all parties to receive details of the Authorisation, whether it is given, how long for and any conditions attached to it. This will enable a joined up response to the services the person is receiving.

The request for a Standard Authorisation also asks how the care is funded. This will enable the DoLS Team to identify self funding residents (please note this will only apply in Care Homes) and those residents whose care is funding by the CCG as Continuing Health Care funding.

Following a Supervisory Body's decision the care manager and, in a hospital, the person responsible for managing the DOLS will be notified of the decision. This will include any Conditions which have been set and any issues highlighted for the attention of the care manager/ nursing staff.

The care manager must monitor compliance with any conditions set as they are mandatory and must report any failure to the appropriate DoLS Team. The care manager/nurse must take immediate action to address any issues that have been highlighted for their attention.

A care manager should always be allocated in any situation where a DoLS authorisation has been issued and this action should trigger a review of the care plan.

The following table explains the links between the DoLS Authorisation process, Safeguarding and the sources of funding for care and care providers.

	Authorisation Issued	**Authorisation refused and deprivation occurring**	**Authorisation Refused as grounds are not met and no deprivation**
Local Authority Funded	Information shared with those specified in the Code of Practice and Care Manager to be informed of Authorisation, length of time and conditions.	Safeguarding referral to be made by BIA to the relevant social service team. Care Manager to be informed.	Information shared with those specified in the Code of Practice and Care Manager to be informed.

Self Funded care (care homes only)	Information shared with those specified in the Code of Practice.	Safeguarding referral to be made by BIA to the relevant social service team. Investigating Worker to be the BIA.	Information shared with those specified in the Code of Practice.
Continuing Health Care Funded	Information shared with those specified in the Code of Practice and Continuing Health Care Team informed Authorisation, length of time and conditions.	Safeguarding referral to be made by BIA to relevant social service team. Investigating Worker to be the BIA.	Information shared with those specified in the Code of Practice and Continuing Healthcare Team to be informed.
Hospital Admission	Information shared with those specified in the Code of Practice and the hospital's designated person to be informed of Authorisation, length of time and conditions.	Safeguarding referral to be made by BIA to relevant social service team. Investigating Worker to be the BIA.	Information shared with those specified in the Code of Practice and hospital's designated person to be informed.

Procedure for the Managing Authority

Preventing a deprivation

When admitting any person, without capacity to consent, to admission to a care home or hospital, every effort should be made to avoid depriving them of their liberty during their stay. A checklist to assist staff in assessing the nature, extent and duration of any restrictions is attached at **Appendix 1.** More complete guidance can be found in the DoLS Code of Practice.

Identifying a deprivation

For cases where it is not possible to provide care and treatment in a less restrictive way, an application must be made in advance to deprive someone without capacity of their liberty during their stay.

The appropriate member of staff within the Managing Authority must identify whether the situation will require a Standard Authorisation to be issued. The Supreme Court has now confirmed that here are two key questions to ask – the 'acid test':

(1) Is the person subject to **continuous supervision** and **control** (both aspects are necessary)

AND

(2) Is the person free to leave? (The person may not be saying this or acting on it but the issue is about how staff would react if the person did try to leave).

So this now means that if a person is subject both to continuous supervision and control <u>and</u> not free to leave they are deprived of their liberty.

They must then decide whether the situation is so urgent it cannot wait for 21 days. If this is the case, the person acting on behalf of the Managing Authority must issue an Urgent Authorisation as soon as the person becomes deprived of their liberty.

This will not be necessary if the situation is very short term or an emergency. For example

- Where someone has developed a lack of mental disorder due to a physical illness and once that physical illness is treated the mental disorder will resolve.
- Where a person is in Accident and Emergency or in a care home and it is anticipated that within a few hours or a few days the person will no longer be in that environment.
- Where there is no expectation that a standard authorisation will be needed.

Making an application

The procedure for completing forms and recording is described in **Appendix 2**

Completed forms must be copied and distributed as directed on the forms themselves.

Completed forms must be sent immediately to the appropriate Deprivation of Liberty Safeguarding Team.

The Managing Authority must make sure it's staff have copies of the forms they will have to complete.

The appropriate Manager in the Managing Authority must also be notified that an Authorisation has been issued or requested. They will be responsible for collating information related to the Deprivation of Liberty Safeguards and notifying the Care Quality Commission.

There are two statutory notifications to CQC, one of the request, which should be completed as soon as the Standard Authorisation has been requested, and

one for the outcome which should be completed once the Managing Authority has been formally notified of the outcome.

As soon as an Urgent Authorisation is completed or an Application for a Standard Authorisation is made the family or carers of the person in question must be informed by the hospital or care home.

Once an authorisation decision is issued

The Managing Authority will receive a formal document for either a Standard Authorisation Granted (Form 5) or a Standard Authorisation Not Granted (Form 6).

If the authorisation is not granted on best interests grounds, but a deprivation is occurring, an adult protection referral will be made to oversee the changes the Managing Authority need to put in place.

If the Authorisation is granted it may be given subject to conditions. It is essential that the Managing Authority reads the conditions immediately on receipt of the paperwork.

*The Managing Authority **must** comply with all conditions set.*

If they are unable to comply with any conditions set they should contact the appropriate DoLS team without delay as a review of the Authorisation may be needed.

The Supervisory Body will forward the Managing Authority a form requesting written evidence to be provided to them to evidence that conditions have been met. **(see Appendix 3).**

If this is not produced by the specified time the Council's Contracts Team will be notified and will consider whether the failure to comply should result in a suspension of placements to the Care Home. In the case of a Hospital then Hospital Managers will be notified. In both cases CQC will be notified.

For conditions where no written evidence has been requested, it will be the responsibility of the Care Manager or Ward Manager to ensure the conditions are complied with. This is likely to require a review of the persons care.

Any failure to comply must be notified to the appropriate DoLS Team and the procedure described above will be followed.

Reviews of Standard Authorisations

The Managing Authority must request a review in any of the below circumstances:

- The person no longer meets one of the qualifying requirements or

- The reason why the person meets the qualifying requirements is different than it states on the standard authorisation or
- There has been a change in the persons case which means that conditions on the authorisation need to be varied
- Discharge planning, change of placement, or return home of a resident or patient where there is a DoLS authorisation in force

A Standard Authorisation means the person is a detained patient or resident and that it is in their best interests to be detained in the hospital or care home**.** If this changes it will generate a review.

If the person continues to lack capacity and there are plans for a move of any kind the following must happen before discharge

- A best interests decision needs to be made as to where it is now in their best interests to live or be treated
- If they will be a detained resident/patient the new placement need to apply for an authorisation **prior to the move**
- If they will not need to be detained in the new placement a review of the existing authorisation needs to be requested **prior to the move**

Deciding which Supervisory Body to contact

The rules for deciding which local authority is the supervisory body vary, depending on whether it is a hospital or a care home.

Hospitals - in the case of hospital patients, where a CCG is commissioning the patient's care or treatment or the person's ordinary residence. In all other cases, the supervisory body is the Local Authority for the area in which the relevant hospital is located.

Cross border issues, where treatment and residence may cross England and Wales, are more complicated and in these circumstances the Managing Authority should seek advice from the appropriate DoLS Team. However, Supervisory Bodies should not delay any application whilst the issue of responsibility is determined. Where there is no immediate agreement to the contrary, the application should be made to the authority where the hospital is located.

Guidance on establishing the responsible commissioner can be found at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_078466

Care Homes - in the case of care homes, the supervisory body is the local authority for the area in which the person ordinarily resides. If the person is of no fixed abode, then the supervisory body is the local authority for the area in which the care home is situated.

This means that a care home's own local authority will not necessarily be the supervisory body. As a general rule, the Supervisory Body will be the local authority which is funding the care. When care is self-funded the rules of ordinary residence apply.

Where there is any doubt as to who the Supervisory Body is, the application should be sent to the DoLS Team where the care home is located and they will ensure that agreement is reached on the correct Supervisory Body.

Guidance on establishing ordinary residence in relation to Deprivation of Liberty Safeguards can be found in pages 58 – 62 of *http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_114338.pdf*

Assessors

It is the responsibility of the supervisory body to appoint suitable assessors. Regulations made under DOLS set out the eligibility requirements for assessors.[3] These stipulate that assessors must:

- have an applied knowledge of the Mental Capacity Act 2005 and its Code of Practice
- be proficient in record-keeping, with the ability to write clear and reasoned reports

and that:

- mental health assessors must have undertaken the training program made available by the Royal College of Psychiatrists, and
- best interest's assessors must have undertaken training provided, or approved by, specified universities.

A minimum of two assessors are required for each case. An assessor may carry out any assessment for which they are eligible, but the mental health assessment and the best interest's assessment must be undertaken by two different people. **(see Appendix 4 for all assessments)**

Undertaking an assessment

Once a referral has been received the BIA will contact the care home or hospital and inform them that they have been allocated to undertake the assessment and when they plan to visit. The BIA will undertake the assessment within the agreed timescales, ensuring they contact and consult with the relevant parties. They will establish whether an Independent Mental Capacity Advocate (an IMCA) needs appointing.

The DOLS team will ensure a mental health assessment is undertaken by arranging for a suitably trained doctor to undertake an assessment and provide the necessary paperwork within the appropriate timescales. A list of

appropriately trained doctors willing to undertake assessments will be maintained by the Administrator.

The BIA must keep appropriate written records of the assessment. Should an assessment recommend an authorisation then the BIA needs to identify the Person's Representative. A copy will be kept on the case file (if there is an existing case file) and the original forms and recording submitted to the Administrator who will maintain a DoLS case file. There is a statutory requirement for all supervisory bodies to keep clear and comprehensive records for every person deprived of their liberty. This includes records of applications for authorisations, details of the assessment process, information about the Person's Representative and the documentation related to the termination of the authorisation. Managing authorities are required to keep duplicate records.

Once a supervisory body receives a request for a standard deprivation of liberty authorisation, it must proceed with the application, even where questions arise over where the relevant person is ordinarily resident.

Regulations made under the MCA DOLS state that if a dispute occurs, the local authority that receives the request for a deprivation of liberty authorisation must act as the supervisory body until the dispute is resolved.

Under DOLS, a series of six assessment requirements must be met in determining whether it is necessary to deprive a person of their liberty in their own best interests to protect them from harm. Once a supervisory body has received an application for a standard authorisation, and is satisfied that it is valid and correct, they must commission the required assessments. The six required assessments are as follows:

- **Age assessment**: to assess whether the person being deprived of liberty is aged 18 or over
- **No refusals assessment**: to ensure that the authorisation being requested does not conflict with a valid decision by a donee of lasting power of attorney ('an attorney'), or by a deputy appointed for the person by the Court of Protection, and is not for the purpose of giving any treatment that would conflict with a valid and applicable advance decision made by the relevant person
- **Mental capacity assessment**: to assess whether the person being deprived of liberty lacks capacity to decide whether to be admitted to, or remain in, the hospital or care home in which they are being, or will be, deprived of liberty
- **Mental health assessment:** to assess whether the person being deprived of liberty is suffering from a mental disorder within the meaning of the Mental Health Act 1983, but disregarding any exclusion for people with learning disabilities
- **Eligibility assessment:** to assess whether the person is eligible to be deprived of liberty under the MCA DOLS. Broadly, a person is eligible unless they:

❖ are detained under the Mental Health Act 1983

- ❖ are subject to a requirement under the Mental Health Act 1983 that conflicts with the authorisation being requested (such as a guardianship order requiring them to live somewhere else)
- ❖ object to being in hospital for the purpose of treatment of a mental disorder, or to being given some or all of the treatment in question, and they meet the criteria for detention under the Mental Health Act 1983. In deciding whether a person objects, their past and present behaviour, wishes, feelings, views, beliefs and values should be considered where relevant

- **Best interests assessment**: to establish whether there is a deprivation of liberty and, if there is, whether it is:
    - in the best interests of the person to be subject to the authorisation
    - necessary in order to prevent them coming to harm
    - a proportionate response to the likelihood of them suffering harm and the seriousness of that harm.

Using 'equivalent' assessments

If an 'equivalent assessment' to any of the above assessments already exists for the relevant person, supervisory bodies may use this assessment instead of carrying out a new assessment. For example, a recent assessment carried out for the purposes of the Mental Health Act 1983 could serve as a mental health assessment under the MCA DOLS. However, great care should be exercised when deciding to use an equivalent assessment and it should not be done routinely. A standard form is available to supervisory bodies for recording that an equivalent assessment has been used.

Urgent Authorisations

Where the supervisory body receives notice that an urgent authorisation has been issued, it should make arrangements to begin the assessment process for a standard authorisation immediately. All assessments must be completed within the period for which the urgent authorisation has been given.

An urgent authorisation can last for a **maximum of seven calendar days**. However, in exceptional circumstances, managing authorities may request an extension of an urgent authorisation. A standard form is available to managing authorities for this purpose. On receipt of such a request, supervisory bodies need to consider the facts of the case and decide whether an extension is necessary in the circumstances. The supervisory body must decide the period of any extension, which must not exceed seven calendar days. A standard form is available for the supervisory body to record their decision and inform the managing authority.

A dialogue between the supervisory body and managing authority should be maintained throughout the period of the urgent authorisation.

Handling application requests from third parties

If the relevant person or any relative, friend, carer or other third party believes that they or someone else is being deprived of their liberty without authorisation, they can notify the managing authority. If the managing authority subsequently fails to resolve the matter informally with the relevant person or third party, or to apply for an authorisation within a reasonable length of time, the notifying party can approach the supervisory body directly.

The third party should supply (in writing) the name of the person they are concerned about, the name of the hospital or care home where the person is, and the reasons why they think the person is being deprived of their liberty. On receipt of this letter, the supervisory body must consider whether the request is appropriate and if it should be pursued.

If the supervisory body decides to pursue the request, it must appoint a best interests assessor to carry out a preliminary assessment to determine whether a deprivation of liberty is occurring.

If the preliminary assessment concludes that an unauthorised deprivation of liberty may be taking place, the supervisory body should proceed with the full assessment process required for a standard authorisation.

Alternatively, the managing authority may change the person's care arrangements so there is no longer any deprivation of liberty. If, however, the managing authority considers that the original care regime must continue, it will need to give itself an urgent authorisation. The supervisory body to record its actions following the completed assessment.

By law, supervisory bodies should also notify:

- the third party who made the request
- the relevant person
- the managing authority of the relevant hospital or care home
- any IMCA involved.

On completion of an assessment

If any of the assessments conclude that the relevant person does not meet qualifying requirements, the supervisory body cannot issue a deprivation of liberty authorisation. The supervisory body must record its decision and notify the following people:

- the managing authority
- the relevant person
- any relevant person's representative if there is a previous authorisation in force
- any IMCA involved

- every interested person named by the best interest's assessor in their report as somebody they have consulted in carrying out their assessment.

If the outcome of all assessments are positive, the supervisory body must issue a standard deprivation of liberty authorisation.

Issuing a standard authorisation

It is the responsibility of the supervisory body to set the time period of the standard authorisation. This should be for as short a time as possible and no longer than the time period suggested by the best interest's assessor.

The law requires the supervisory body to issue a standard deprivation of liberty authorisation in writing (Form 5) and to include certain details, including the purpose of the deprivation of liberty and its duration. It is also required to keep written records of any standard authorisations issued.

Once issued, supervisory bodies are required to give a copy of the authorisation to:

- the managing authority
- the relevant person
- the relevant person's representative (see below)
- any IMCA involved
- every interested person named by the best interest's assessor in their report as somebody they have consulted in carrying out their assessment.

Professional Advice

The Deprivation of Liberty Lead will be the first point of contact for professional advice and support. The Professional Lead for Mental Health can be contacted if no Deprivation of Liberty Lead is available. A BIA forum for shared learning and peer support has also been established.

Authorising an application

Each Supervisory Body has designated staff that can receive and authorise an application. Their role is to scrutinise the completed application for any errors in completion, to accept the application and grant authorisation and, if appropriate, attach any conditions to the authorisation, including confirmation of review dates.

The DOLS Lead for the local authority will complete the necessary paperwork and then present the assessments to the Signatory for the Local Authority. The DOLS Administrator will record all assessments and their outcomes and maintain records of the date of the authorisation and the next planned review. They will maintain case files and a database of all referrals and outcomes. The Administrator will ensure the required paperwork and notifications are issued to all the relevant parties.

Use of IMCA'S

Where an IMCA is needed for the assessment then the DOLS Administrator will contact Voice ability to provide this. Whenever someone who lacks mental capacity to consent to arrangements for their accommodation has no family or unpaid carers, it is necessary that an IMCA be involved to oversee the decision-making process. When applying for authorisation, the managing authority must inform the Supervisory Body if an IMCA is or should be involved. The BIA should also be mindful of the requirement if the relevant person is discovered to be unbefriended.

Appointment of the Person's Representative

The Supervisory Body, through the BIA, will appoint a representative for every person subject to a Deprivation of Liberty authorisation. The Person's Representative will represent them in, and be consulted on, all matters connected to their deprivation of liberty. They will usually be a family member or friend but can also be a paid representative, where the person has no family member or friends to fulfill the role on their behalf. This person will be independent of the commissioners and providers of their service.

The selection of the Person's Representative is a two-stage process:

Selection by the best interest's assessor:

The best interest assessor must nominate someone to the supervisory body who they think is suitable to be the Person's Representative. This selection may be based on the relevant person's own choice of representative. If the relevant person has capacity and chooses an eligible person, that person must be nominated. If the relevant person lacks capacity, the Person's Representative may be:

- the donee of their lasting power of attorney or a deputy appointed by the Court of Protection (if they have one in place)
- someone nominated by the above mentioned donee or deputy (if they have the authority to make a nomination).

If no eligible person is identified by either route, the assessor must consider who could be the representative. This could be a family member, friend or carer.

Appointment by the supervisory body

Once the supervisory body has received the nomination from the best interest assessor, it must invite the person, in writing, to be the representative. If the person agrees to be the representative, the supervisory body must formally appoint them. Again, this must be done in writing and the letter should set out the role and responsibilities of the Person's Representative.

Supervisory bodies must keep written records of the appointment of the Person's Representative. They must also notify the following people of the appointment:

- the appointed person
- the relevant person
- the relevant person's managing authority
- any donee or deputy of the relevant person
- any IMCA involved
- every interested person named by the best interest assessor in their report as somebody they have consulted in carrying out their assessment.

Appointing a paid representative

Where the relevant person does not have a carer or any family member or friends who can fulfill the role of the Person's Representative and the best interest assessor cannot identify anyone else who is suitable, supervisory bodies may appoint a paid representative to perform the role in a professional capacity.

This person must not be employed by the supervisory body in any capacity. Nor may they be employed by the relevant person's managing authority where the managing authority is a care home. If the relevant person is deprived of liberty in a hospital, the representative may be an employee of the hospital, but only if their role does not relate to the care or treatment of the relevant person in any way.

In Sandwell Voice ability can provide a person's representative but other agencies may also be approached to fulfill this role.

Where a paid representative is appointed, the supervisory body must ensure that a Criminal Records Bureau check has been carried out.

Termination of a representative's appointment

The supervisory body is required to formally terminate a Person's Representative appointment when the authorisation comes to an end. There may also be circumstances in which a representative's appointment may need to be terminated prematurely, for example, if they indicate that they do not wish to continue in the role or if the supervisory body or managing authority is concerned that they are no longer acting in the best interests of the relevant person.

Where the supervisory body wishes to terminate a representative's appointment, it should give notice to them setting out the date on which the appointment terminates and the reasons for the termination. Supervisory bodies can decide what notice period to give. For example, where a standard authorisation is coming to an end, it may be appropriate to give formal notice to the representative two weeks before the termination date. If the supervisory body wishes to terminate the appointment because they

have concerns that the representative is not acting in the relevant person's best interests, it may be appropriate to give a shorter notice period.

The supervisory body must record the termination of the appointment in writing and send copies to:

- the relevant person
- the relevant person's managing authority
- any donee or deputy of the relevant person
- any IMCA involved
- every interested person named by the best interest assessor in their report as somebody they may have consulted in carrying out their assessment.

Reviews

Supervisory bodies are responsible for reviewing standard authorisations. They have the discretion to carry out a review at any time it appears appropriate to them to do so. However, they are legally required to carry out a review where the relevant person, their Representative or the managing authority requests one.

There is a standard form available to managing authorities for the purpose of requesting a review (Form 10). Supervisory bodies should expect to receive this form from managing authorities seeking reviews.

In addition to the above, supervisory bodies are also legally required to review an authorisation if:

- the relevant person no longer meets the age, no refusals, mental capacity, mental health or best interests requirements
- the relevant person no longer meets the eligibility requirement because they object to receiving mental health treatment in hospital and they meet the criteria for detention under section 2 or 3 of the Mental Health Act 1983
- there has been a change in the relevant person's situation and, because of the change, it would be appropriate to amend or delete an existing condition of the authorisation or add a new condition
- the reasons why the person now meets the qualifying requirements are different from the reasons recorded at the time that the authorisation was given.

If a supervisory body receives a request for a review, it must assess which, if any, of the qualifying requirements should be reviewed and record its decision. The supervisory body should then commission the assessments required and inform the relevant person, their representative and the managing authority that a review is being carried out.

The assessment process for a review of the qualifying requirements is the same as for a standard authorisation. The outcome of the assessments should be recorded by the assessors and copies provided to the supervisory body.

Once the supervisory body has received the assessment results, it must decide whether the person still meets the qualifying requirements for being deprived of their liberty. If the qualifying requirements are not met, the authorisation must be terminated. If the assessments illustrate that deprivation of liberty is still necessary, the supervisory body must consider whether the conditions attached to the authorisation need to be amended.

Reviews should be held as identified in the authorisation. A review must be held within twelve months but generally it will take place sooner than this unless a situation is very settled.

The Managing Authority has a duty to request a review whether or not a Deprivation of Liberty Authorisation is still required.

As soon as the managing authority thinks that they can look after the relevant person safely without the need to deprive them of their liberty, they should do so immediately.

Where possible the BIA who was involved in the original assessment will be involved in the review. Where this isn't possible another BIA will take their place.

Ending a standard authorisation

If a standard authorisation comes to an end, with no fresh authorisation replacing it, or a review concludes that it should be terminated, the relevant person should cease to be deprived of their liberty immediately. It would be unlawful to continue to deprive someone of their liberty, leaving the managing authority open to legal challenge.

Supervisory bodies should always check that managing authorities have care plans in place to ensure that the relevant person is cared for in a way that means they are no longer deprived of their liberty.

If a managing authority believes that a person should continue to be deprived of their liberty beyond the period permitted by the authorisation, they should apply for a new authorisation. It is not possible to renew deprivation of liberty authorisations.

If an authorisation is terminated, the supervisory body must record this and give notice in writing to the following people:

- the relevant person
- the relevant person's representative
- the managing authority
- every interested person named by the best interests assessor in their report as somebody they have consulted in carrying out their assessment.

Suspending an authorisation

It is possible to suspend an authorisation for a period of up to 28 calendar days under exceptional circumstances. This may be necessary, for example,

because the relevant person is detained in hospital under the Mental Health Act 1983. Supervisory bodies are responsible for authorising the suspension and re-instatement of authorisations on application from a managing authority. Standard forms are available for this purpose. However, due consideration should be given that the suspension does not overrun the period in which the DOLS has been authorised.

Monitoring and auditing

The Care Quality Commission will be responsible for inspecting all managing authorities and supervisory bodies.

The Department of Health (DOH) will require statistical/data information of all authorisation requests.

The DOLS Administrator will maintain appropriate records and submit returns to the DOH.

The DoLS Lead will report information back on a quarterly basis to the Supervisory Body for Sandwell.

The DOLS lead will also complete an Annual Report on the DoLS activity in Sandwell which will also be presented to the local Safeguarding Adults Board for scrutiny.

Ongoing training and support for Best Interest Assessors

There is a requirement for ongoing refresher training. BIAs will be expected to prioritise attendance at BIA Forums and these will be held on a Bi Monthly basis, together with ongoing training as required. A record of attendance will be maintained.

Safeguarding

BIAs will ensure that, where appropriate, situations will be reported and managed under Sandwell's multi agency safeguarding procedures.

Procedure for applications to the Court of Protection

Before considering an application to the Court of Protection, the procedure for settling disputes as described in the Multi-Agency Mental Capacity Act Guidance should be followed.

What follows is a summary of the procedure that should be followed as stated in the DoLS Code of Practice **(see pages 98 – 101**)

The person or their representative can appeal to the Court of Protection once a **Standard** authorisation is given on any of the following matters:

- Whether the qualifying requirements are met.
- The period.

- The purpose it was given for.
- The conditions of the authorisation.

Similarly they can appeal once an **Urgent** authorisation is given on any of the following matters

- Whether it should have been given.
- The period of it.
- The purpose it was given for.

Whenever possible, concerns about the Deprivation of Liberty should be resolved informally or through Sandwell Local Authority complaints procedure.

Guidance on the court procedures, including how to make an application, is given in the court of protection Rules and Practice Directions issued by the court. (http://www.publicguardian.gov.uk/)

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

- A person who lacks capacity.
- The donor or donee of a Lasting Power of Attorney.
- A court appointed Deputy.
- A person already named in a court order.
- The relevant person's representative.

The relevant person or someone acting for them can apply to the Court of Protection even before an Authorisation is given, perhaps to decide on their capacity in this matter. It is up to the Court whether to consider this request in advance.

The Supervisory Body remains accountable for any dispute, complaint or litigation that may arise in relation to the Deprivation of Liberty Safeguards.

All forms relating to applications to the Court of Protection and details of fees can be downloaded from

http://www.direct.gov.uk/en/Governmentcitizensandrights/Mentalcapacityandthelaw/Makingdecisionsforsomeoneelse/DG_176235

The Court of Protection forms will be COP Application Pack 3 or COP Application Pack 4 relating to health and welfare.

Practitioners should be aware of the number of cases reported from the Court of Protection and the impact of these on individual practice, particularly in relation to unacceptable delays in applying to the Court.

Certain decisions are of such complexity that they should be made by the Court of Protection rather than seeking to use the DoLS process.

Welfare decisions which are complex should also be made by the Court of Protection and the MCA Code of Practice should be consulted in the first instance for advice and guidance.

DEFINITIONS, ROLES AND RESPONSIBILITIES:

Safeguarding Policy and Procedures	The document that explains how to recognise if a vulnerable adult may be being abused, how to report it and the roles and responsibilities of agencies within this process.
Capacity	The ability of a person to make a decision about a particular situation at the time it needs to be made.
Care Management	Process of assessing the needs of individuals, identifying how those care needs should be met, commissioning the care and the reviewing of that care when funded by a local authority.
Continuing Healthcare Funding	A system to establish an assessment to determine eligibility for National Health Service funding of long-term care provided outside hospitals.
Deprivation	The practice of exercising control over the care of a person without capacity to the extent they cannot choose what happens to them. This includes not being able to leave a care home or hospital or not being able to be discharged to a carer at their request. An unauthorised Deprivation is unlawful.
Health and Social Care Workforce	For the purposes of this guidance, this is any member of care, nursing or medical staff who are involved in looking after people without capacity in a care home, hospital. This also extends to those who assess and arrange care packages for those without capacity.

	The responsibilities of this group are to: • Prevent an unnecessary Deprivation of Liberty. • Identify when an Authorisation may be needed and inform the relevant Managing Authority. • Recognise when an unlawful Deprivation is occurring, inform the Supervisory Body and make an Adult Protection Referral. • Work in accordance with the Mental Capacity Act and Code of Practice. • Work in accordance with Deprivation of Liberty Safeguards Code of Practice.
Independent Mental Capacity Advocate (IMCA)	An advocate with a specific remit to support and represent people who lack capacity to make specific decisions and who have no-one appropriate to support them.
Signatory	The Decision maker who scrutinises the completed assessments on behalf of the Supervisory Body.
Managing Authority	The person or body with management responsibility for the hospital or registered care home where the Deprivation may occur.
Nursing and Medical Care	This is the ongoing care and treatment received by a person without capacity. It also includes care that is assessed, delivered and/or funded by the National Health Service.
Relevant Person's Representative	The Relevant Person's Representative is appointed for every person who has a standard authorisation agreed. They are appointed at the time the authorisation is given or as soon as practicable thereafter. The role of the relevant person's representative, once appointed, is:

	• To maintain face to face contact with the relevant person. • To represent and support the relevant person in all matters relating to the Deprivation of Liberty, including, if appropriate, triggering a review, using an organisation's complaints procedure on the person's behalf or making an application to the Court of Protection.
Restriction	An act imposed on person that is not of such a degree or intensity as to amount to a Deprivation of Liberty. It is acceptable to restrict a person's liberty but not to deprive them of it. This can be achieved by promoting the person's control over daily living and maximising choice and autonomy. It should also include involving family, friends and carers at every stage and helping the person to maintain contact with family, friends and carers.
Safeguarding	As stated by the Vulnerable Adult Safeguarding Board, this is the prevention of abuse of a vulnerable adult.
Self Funder	A person who has eligible care needs who can afford to purchase this care themselves as they have funds over the Local Authority's capital limit.
Supervisory Body	Those organisations that have the responsibility to commission assessments when requested to do so, to consider requests for a Deprivation of Liberty and when all assessments agree, to authorise deprivation of liberty. The responsibilities of the Supervisory Body are: • A robust referral and receiving

	system. • Availability of advice to Managing Authorities. • Assessments conducted within pre determined time frames. • Scrutinise the assessments completed. • Sufficient assessors ensuring compliance with Conflict Regulations. • Sufficient trained Doctors to complete Mental Health assessments. Maintenance of standards and records. • Recording and monitoring of assessments and authorisations. • Tracking systems. • Conducting reviews. • Manage appeals to the Court of Protection. • Reviewing the Independent Mental Capacity Advocate (IMCA) involvement. • Audit and governance. • Processes and protocols to support the process particularly where authorisations are not granted.

Sandwell Metropolitan Borough Council

NHS Sandwell and West Birmingham Clinical Commissioning Group

Deprivation of Liberty Safeguards Restrictions Checklist

This is not an exhaustive list you will find space at the end to add any other types of restrictions. If any restrictions are identified please indicate how frequently they are used. Where there are restrictions identified, a record of ongoing restrictions is needed.

This list alone will not tell you whether you need to apply for a DoLS Authorisation you will need to monitor the extent and frequency of all restrictions in place

TYPE OF RESTRICTION	YES	NO	FREQUENCY
The main door is kept locked			
Secondary doors are locked			
The main door is coded and the person does not know the code			
There is a door system in place which is confusing for the person			
The person does not participate in social activities in the home*			
The person remains in bed for long periods of time			
A wheelchair belt or other physical restraint is used			
The person often has to be persuaded not to leave the building			
The person has limited choice of daily activities			
The person has limited choice of meals			
Side rails are used			
The person goes out of the home less than once a month*			
The person is supervised at all times			
The person is supervised for some periods such as meal times			
Sedation is prescribed to be used as and when required			
A Behaviour management plan is in place due to violence to self which involves some types of restraint			

Behaviour management plan in place due to risk to others which involves some type of restraint			
Restrictions on some visitors are in place due to risks which the person is not able to understand			
The person is supervised outdoors due to socially unacceptable behaviours			
Supervision is required outdoors due to lack of awareness about everyday dangers			
There are some physical restrictions in place due to incontinence, smearing, vomiting etc			
There are some restrictions in place due to public nuisance such as emergency calls to Police, Fire			
There are restrictions in place which limit contact with some family members			
There are restrictions in place on the use of telephone			
The person only leaves the building with 2:1 support			
The person only leaves the building with 1:1 support			
The person has restricted access to grounds			
The person has restricted access to the kitchen			
The person has restricted use of parts of the building			
Walking aids are sometimes removed or their use is limited			
The person is prevented from leaving the building			
The person is monitored by equipment, camera or alarm			
* Care homes only			

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Deprivation of Liberty Safeguards
RECORD OF ONGOING RESTRICTIONS

Name of Resident :
Type of restriction as identified on checklist :
What is the reason for using this restriction? :
What harm would happen to the patient/ resident if this restriction is not in place and how severe would it be? :
How likely is the harm, give examples if possible? :
What else have you tried before using this restriction? :
How does the restriction affect the patient/ resident? :
What can you do to minimise the impact of the restriction on the patient/resident?
Will anything change in the future that means you may no longer need this restriction? :
If the restriction has been identified as ongoing and frequent please monitor this.
Date this restriction will be reviewed :
I confirm this restriction has been reviewed and is still necessary in the residents best interests Signed :
Date this restriction will be reviewed :
I confirm this restriction has been reviewed and is still necessary in the residents best interests Signed :
Date this restriction will be reviewed :
I confirm this restriction has been reviewed and is still necessary in the residents best interests Signed :
Date this restriction will be reviewed :
I confirm this restriction has been reviewed and is still necessary in the residents best interests Signed :
Date this restriction will be reviewed :

I confirm this restriction has been reviewed and is still necessary in the residents best interests Signed :

NHS
Sandwell and West Birmingham
Clinical Commissioning Group

Deprivation of Liberty Safeguards

FREQUENCY CHART

Name of Patient/Resident :
Type of restriction as identified on checklist :

Date: **Time:**	**Date:** **Time:**	**Date:** **Time:**	**Date:** **Time:**	**Date:** **Time:**
Date: **Time:**	**Date:** **Time:**	**Date:** **Time:**	**Date:** **Time:**	**Date:** **Time:**
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Date: **Time:**	**Date:** **Time:**	**Date:** **Time:**	**Date:** **Time:**	**Date:** **Time:**

APPENDIX 4

Type of assessment	What is assessed	Who can assess
Age assessment	Are they over 18	Anyone eligible to be a Best Interest Assessor
No refusals assessment	Does the decision conflict with any other legal authority	Anyone eligible to be a Best Interest Assessor
Mental Capacity Assessment	Do they lack capacity to consent to the arrangements for their care and/or treatment	The Mental Health or the Best Interest Assessor
Mental Health Assessment	Are they suffering from a mental disorder	Section 12 Doctor or Registered Medical Practitioner 3 years post registration experience with special expertise in the diagnosis and treatment of mental disorder
Eligibility Assessment	Relates to the persons status under the Mental Health Act (MHA)	Section 12 Doctor or Best Interest Assessor who is also an AMHP
Best interests assessment	Are they going to be detained, is it in their best interests to prevent harm and is it a proportionate response.	Approved Mental Health Professional (AMHP) Registered social worker/ nurses, , Occupational Therapist, Chartered Psychologist

Sandwell Supervisory Body
Managing Authorities Referral Process
Please call the following number to request a new Authorisation for a deprivation of liberty.

8am – 8pm Monday - Friday			Evenings and Weekends	
Tel. no:	0845 352 2266		**Tel. no:**	0121 569 2355
Fax:	0121 569 5789		**Fax:**	Call to obtain
Email:	sandwell_assist@sandwell.gov.uk		**Email:**	N/A

Call the Supervisory Body
Contact number above

Fax/email the **Form 1**
(this form requests a standard or urgent authorisation)
please fax to the relevant fax number above

If an extension to the Urgent Authorisation timescale is required – fax Form 1 again (completing the information in page 7) to the fax number above

The Sandwell Supervisory Body will make a decision and will inform you of their decision through a telephone call and by **Form 5** (if the Authorisation is given) or **Form 6** (if the Authorisation is not approved).

Please note:
The administrative office for the DoLS Team is:

First Floor
Jack Judge House
PO Box 15888
Oldbury
West Midlands
B69 9EN
dols_administrators@sandwell.gov.uk

If you would like to request a continuation of a current DoLS, send the completed Form 2 directly to the DoLS Team