

## The Mental Capacity Act Deprivation of Liberty Safeguards Policy and Practice Guidance.

Devon County Council and Torbay and Southern Devon  
Health and Care NHS



The guidance should be used in conjunction with a Deprivation of Liberty Code  
of Practice which can be downloaded from

[http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/documents/digitalasset/dh\\_087309.pdf](http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_087309.pdf)

**Deprivation of Liberty Safeguards Policy G1750**



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	<b>Deprivation of Liberty Safeguards</b>	<b>Page No</b>
1.	Introduction	P6
2.	Background Information	P6
3.	Scope of Policy	P7
4.	Aim of the Policy	P8
5.	What is a Deprivation of Liberty Safeguards?	P9
6.	Role of the Legal Services	P9
7.	Role of the Safeguarding Adults Board	P9
8.	Role of the Mental Capacity Act& Deprivation of Liberty Safeguards Operational Lead	P9
9.	Role of all staff in Managerial Positions	P10
10.	Role of all Staff	P11
11.	Framework for Implementing the Deprivation of Liberty Safeguards	P11
12.	Supervisory Body	P11
13.	Key Responsibilities of the Supervisory Body	P11
14.	Supervisory Bodies Commissioning Responsibilities	P12
15.	The Managing Authority	P13
16.	Key Responsibilities of Care Homes and Hospitals in their role as Managing Authorities	P13
17.	How and When Can Deprivation of Liberty Safeguards be Applied for and Authorised?	P15

18.	Urgent Authorisation	P15
19.	Managing Authority Responsibilities re Urgent Authorisation's	P16
20.	Terminating an Urgent Authorisation	P16
21.	Extending the Urgent Authorisation	P17
22.	Standard Authorisation	P17
23.	Receiving a request for assessment of a Standard Authorisation	P17
24.	Independent Mental Capacity Advocate	P18
25.	Third Party Requests	P18
26.	Assessment Process for a Standard Authorisation	P19
27.	The Six DoLS Assessments	P19
28.	Assessment Outcomes	P21
29.	Recording and Notifying Relevant Parties of the Decision	P21
30.	Responsibilities of the Managing Authority Once the Outcome Report Has Been Received	P22
31.	Actions to be Undertaken by the Supervisory Body and Managing Authority Where Liberty is Being Deprived but the Requirements for Authorisation are not met	P22
32.	Assessments	P23
33.	Reviews and Ending the Authorisation	P23

34.	Supervisory Body Responsibilities	P24
35.	Appeals to the Court of Protection about an authorized Standard Deprivation of Liberty Safeguards application. (s21 MCA)	P25
36.	Making Applications to the Court to challenge an authorised standard Deprivation of Liberty safeguard	P25
37.	Out of Area Assessment	P25
38.	Relationship Between the Mental Capacity Act and Mental Health Act	P26
39.	Safeguards for the Person Involved	P39
40.	Deprivation of Liberty Safeguards Training and Accreditation	P27
41.	Best Interest Assessor Training	P27
42.	Mental Health Assessors (Section 12 Drs)	P27
43.	Information Sharing	P28
44.	Record Keeping	P28
45.	Devon County Council and Torbay and Southern Devon Health and Care NHS Trust Contact Details	P28
46.	Appendix 1- SCIE Guidance 41	P30
47.	Appendix 2- DoLS Process Flowchart	P32

## 1. Introduction

1.1 The Deprivation of Liberty Safeguards (DoLS) 2007 is an amendment to the Mental Capacity Act (MCA) 2005. The [Deprivation of Liberty Safeguards Code of Practice](#) is a supplement to the overarching [MCA Code of Practice](#). They provide a legal framework to protect those who may lack the capacity to consent to the arrangements for their treatment or care and where levels of restriction or restraint used in delivering that care are so extensive as to be depriving the person of their liberty. These Codes of Practice should remain the main point of reference for staff working with Deprivation of Liberty issues.

1.2 The Codes of practice can be accessed on:

[http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/documents/digitalasset/dh\\_087309.pdf](http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_087309.pdf)

1.3 This Policy should be read in conjunction with Devon County Council and Torbay and Southern Devon Health and Care NHS Trust joint Mental Capacity Act 2005 Policy,

## 2. Background Information

2.1 On 5 October 2004, the European Court of Human Rights (ECTHR) announced its judgment in the case of HL v the United Kingdom (commonly referred to as the 'Bournewood' judgment). The case relates to a profoundly autistic man with a learning disability, who lacked the capacity to consent to, or to refuse, admission to hospital for treatment. The ECTHR held that he was deprived of his liberty when he was admitted, informally, to Bournewood Hospital.

2.2 The European Court of Human Rights further held that:-

- The manner in which the man was deprived of liberty was not in accordance with 'a procedure prescribed by law' and was, therefore, in breach of Article 5(1) of the European Convention on Human Rights, and
- There had been a contravention of Article 5(4) of the European Court of Human Rights because the man was not able to apply to a court quickly to see if the Deprivation of Liberty Safeguards was lawful.

2.3 To prevent further similar breaches of the European Court of Human Rights (ECHR), the MCA was amended to provide additional safeguards for people who:

- lack mental capacity to consent to their care or treatment
- whose care or treatment involves arrangements that have the effect of depriving them of their liberty within the meaning of Article 5 of the ECHR
- but who either are not, or cannot be, detained under the Mental Health Act 1983.

2.4 These safeguards are known as the 'Deprivation of Liberty Safeguards', referred to throughout this documents as DoLS.

### 3. Scope of This Policy

3.1 Deprivations of a person's Liberty can be authorised via two routes. Either

a) Deprivation of Liberty Safeguards where the following criteria apply:

- Aged over 18
- Lack the capacity to consent to the arrangements for their care or treatment
- Are receiving care or treatment within a hospital or care home
- Are receiving care or treatment in circumstances that amount to a Deprivation of Liberty in order to protect them from harm and it appears to be in their best interests
- Have a mental disorder but their detention is not already authorised under the Mental Health Act or inconsistent with an obligation placed on them under the Mental Health Act 1983.

Or

b) Via a s16 Welfare Order from the Court of Protection where the following criteria will apply:

- Aged 16 plus
- Lack the capacity to consent to the arrangements for their care or treatment
- Are receiving care or treatment imputable to the State, within their own home environment. (i.e. Supported accommodation, residential school accommodation foster care arrangements etc)
- Are receiving care or treatment in circumstances that amount to a Deprivation of Liberty in order to protect them from harm and it appears to be in their best interests
- Have a mental disorder but their detention is not already authorised under the Mental Health Act or inconsistent with an obligation placed on them under the Mental Health Act 1983.

3.3 This is a corporate policy and procedure which must be adhered to by all staff working in Devon and Torbay with Vulnerable adults, including staff in NHS and Social Care roles, specifically the DoLS service and associated directorates such as:

- Operations
- Commissioning
- Safeguarding adults.
- Cooperate Governance
- Professional Practice

#### **4. Aim of the policy**

- 4.1 The aim of the policy is to ensure that vulnerable people are able to live as free a life as possible in line with their assessed need for care and or treatment and to ensure that their independence is maximised within their capabilities. Any necessary restrictions and restraints are openly discussed and kept to an absolute minimum, to ensure that they are not in breach of Article 5 of the Human Rights Act
- 4.2 It has been produced with a view to providing both the policy and also practice guidance for Devon County Council, Torbay Council, Torbay and Southern Devon Health and Care NHS Trust and South Devon Healthcare Foundation Trust, who act either in the role of the Supervisory Body or Managing Authority (Deprivation of Liberty Safeguards) or as Commissioners of Care or treatment..
- 4.3 The following principles will be adhered to by all those with a duty of care towards an individual who is, or may be deprived of their liberty:
- 4.4 Staff will carry out their duty to ensure optimum care that meets the needs of the individual and protects their Human Rights.
- 4.5 Staff at all levels will work collaboratively with colleagues across organisations, to ensure efficient and consistent working practices, to ensure timely and effective communication and information sharing and to maximise efficiency of resources.
- 4.6 Staff will adhere both to the principles of the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards at all times and refer to both Acts and their Codes of Practice whenever capacity, best interest and Deprivation of Liberty issues arise.
- 4.7 Every effort will be made by those with a duty of care towards an individual to prevent Deprivation of Liberty. This includes both commissioners and providers of care.
- 4.8 The dignity and well- being of the relevant person will be paramount at all times. A personalised approach will be taken that maximises freedom, minimises control and supports & encourages contacts with family, carers & friends.
- 4.9 Staff will work in accordance with the principles of the Data Protection Act when sharing information and recording only that data which is necessary.
- 4.10 Staff will consider safeguarding within every aspect of their responsibilities. If any act or omission constitutes abuse, as defined by Devon and Torbay Multi Agency Safeguarding Adults Policy and Procedures, they must report this in accordance with the Policy & Procedure.
- 4.11 Staff will seek to engage anyone involved in caring for a person, anyone named by them as a person to consult and anyone with an interest in the person's welfare, and ensure they are consulted in decision-making. If there is no one appropriate to consult then a referral to the Devon & Torbay IMCA Service should be made.
- 4.12 Every effort should be made to resolve disputes surrounding a decision to deprive a person of their liberty locally and informally.

4.13 Staff maintain succinct, systematic and accurate records, which demonstrate:

- Completed mental capacity assessments
- Best Interest Decisions/processes
- Consideration of less restrictive options and evidence to support why they have failed.

## **5. What is Deprivation of Liberty Safeguards?**

5.1 On the 19<sup>th</sup> March 2014, the Supreme Court defined the threshold 'Acid Test' upon which to determine whether a deprivation of liberty is taking place.  
The Definition of a deprivation of liberty is:

5.2 The person is under continuous supervision and control

## **6. Role of Legal Services within each Organisation**

6.1 To manage all instruction to the Court of Protection in relation to Section 16 Welfare Orders, where it is deemed a person is deprived of their liberty and the Supervisory Body is legally unable to authorise the deprivation.

6.2 The relevant legal team will direct staff with what they require.

## **7. Role of Safeguarding Adults Board**

7.1. The Safeguarding Adults Board is responsible for ensuring that the Organisation has appropriately skilled professional staff in place with responsibility for providing assurances to the Board that robust systems and processes are in place for workforce development, implementation in practice, lessons learnt, review, quality assurance and reporting.

7.2. In Devon and Torbay, the statutory duties of the Supervisory Bodies will be discharged through a partnership arrangement governed by a Section 75 of the NHS Act 2006 Agreement. The partnership arrangements will provide a service to meet the requirements of the Deprivation of Liberty Safeguards.

7.3. The statutory duties of the Supervisory Bodies are non-delegable. However, functions of the duties may be sub-contracted where it is clear that the agent is acting on the Supervisory Bodies behalf.

7.4. The Safeguarding Adult Board will hold responsibility for the provision of an agreed MCA/DoLS strategic work plan that is relevant to current case law and developing practice and is disseminated to the MCA/DoLS sub group members for implementation.

## **8. Role of MCA and DoLS Operational Lead**

8.1 The MCA and DoLS lead is responsible for the operational management of the DoLS procedure within prescribed legal timescales, including the commissioning of

appropriately skilled assessors where necessary and effective communication with all relevant parties regarding assessment outcomes.

- 8.2 Development and review of internal policy, practice guidance and standard operational procedures to support implementation in practice.
- 8.3 Monitoring the number of appropriately trained and skilled Independent Mental Capacity Advocates (IMCA), Best Interest Assessors (BIA) and section 12 Mental Health Assessors (MHA) to ensure available resource is able to meet demand.
- 8.4 Provide and report accurate information and statistics to the Organisations internal Governance structure and external bodies such as the Department of Health (DoH), or the Care Quality Commission (CQC) when required.
- 8.5 Oversee the training strategy to ensure it is fit for purpose and incorporates the learning needs of Statutory, Partner and Independent agencies
- 8.6 Develop systems and processes to provide up to date information and advice to all Statutory, Partner and Independent agencies when required.
- 8.7 Provide supervision, support and guidance for Best Interest Assessors.
- 8.8 Attend contract monitoring processes
- 8.9 Attend the MCA/DoLS Sub group to the Safeguarding Adult Board, and report on local activity, learning and development and share examples of Best/Next practice.
- 8.10 Attend local and regional DoLS groups and networks
- 8.11 Manage complaints, disputes, and challenges and disseminate all relevant learning outcomes to ensure continuous improvement in practice.
- 8.12 Escalate all identified risk associated with the MCA/DoLS legislation within the Organisations Governance structure at the earliest possible stage.

## **9. Role of all Staff in Managerial Positions**

- 9.1 Managers within each Organisation are responsible for the implementation of this policy within their department/team. They are responsible for ensuring all staff are aware of the policy guidelines.
- 9.2 Ensure all staff within their department/team has attended the mandatory MCA/DoLS training commensurate with their individual roles (see training strategy available on the Organisations website and intranet).

In Devon: <http://devon.learningpool.com/>

In Torbay: <http://icare/Operations/DOLS/Pages/default.aspx>

- 9.3 Discuss issues relating to MCA/DoLS within Supervision sessions.
- 9.4 Report any concerns or risks to their Line Managers and the DoLS team

## **10. Role of All Staff**

- 10.1 All staff should appraise themselves of the content of this policy
- 10.2 Attend the mandatory MCA/DoLS training commensurate with their role (see training strategy available on the Organisations website and intranet).
- 10.3 Act within the framework of the policy when they believe there may be an unauthorised deprivation of a person's liberty taking place.
- 10.4 Discuss issues relating to MCA/DoLS within Supervision sessions.
- 10.5 Report any concerns or risks to their Line Managers and the DoLS Team

## **11. Framework for Implementing Deprivation of Liberty Safeguards (DOLS).**

### **Definitions of 'Managing Authority' and 'Supervisory Body':**

The DOLS introduces the concepts of "Managing Authority" and "Supervisory Body" - working together; they are responsible for the DoLS process.

## **12. Supervisory Body**

- 12.1 This is the Organisation that receives the applications for authorisation's for Deprivation of Liberty Safeguards. It has the duty to arrange the required assessments and consider whether the criteria for a Deprivation of Liberty Safeguards are met. For the purpose of this policy, The Supervisory Body will be either Devon County Council or Torbay County Council dependent on where the person is ordinarily resident.
- 12.2 In situations where the person lacking capacity is of no fixed abode, the Supervisory Body will be the Local Authority where the care home or hospital which the person is currently resident is situated

## **13. Key Responsibilities of the Supervisory Body**

- 13.1 To co-ordinate a dedicated interagency Deprivation of Liberty Safeguards Service to undertake the work related to Deprivation of Liberty.
- 13.2 To ensure there is a clear referral pathway for all Managing Authorities for all issues relating to DoLS.
- 13.3 To recruit assessors that have the necessary skills, qualifications and experience as outlined in the DoLS Code of Practice
- 13.4 To ensure there are sufficient numbers of assessors to undertake the volume of assessments required.

- 13.5 To ensure all staff working as assessors or in any capacity within the DoLS Service receive adequate training to perform their role.
- 13.6 To offer and deliver training in Deprivation of Liberty and Safeguarding to any staff working for a Managing Authority, Supervisory Body or any other person who may have a duty of care towards adults receiving care or health services.
- 13.7 To ensure consistency and equality of access to, and outcomes from, Deprivation of Liberty Safeguards services.
- 13.8 To have overall responsibility for granting or refusing authorisation's for Deprivation of Liberty and to be responsible for signing authorisation's.
- 13.9 When giving authorisation for Deprivation of Liberty, to specify the duration of the Deprivation of Liberty, which cannot exceed 12 months.
- 13.10 To attach appropriate conditions to the authorisation and make recommendations based on the best interests of the relevant person.
- 13.11 To receive applications from Managing Authorities for standard authorisation's of Deprivation of Liberty and to respond to applications within the prescribed timescales.
- 13.12 Where appropriate to commission an Independent Mental Capacity Advocate (IMCA)
- 13.13 To commission the required assessments of the relevant person to ascertain whether or not they meet the qualifying requirements for a standard authorisation to be given.
- 13.14 To give notice of the decision in writing to specified people, and to notify others by the most appropriate means.
- 13.15 Where an authorisation for Deprivation of Liberty has been granted by the Supervisory Body, to appoint a relevant person's representative to represent the interests of the relevant person.
- 13.16 To respond to requests to review an authorisation for Deprivation of Liberty.
- 13.17 To ensure that DoLS have a recognised complaints procedure in place.

#### **14. Supervisory Bodies Commissioning Responsibilities**

14.1 The provision of **Mental Health Assessors** who are:

- Approved under section 12 of the Mental Health Act 1983, or
- A registered medical practitioner with at minimum of 3 years post registration experience in the diagnosis of or treatment of mental disorder,
- Who in addition has undertaken and completed the standard training for Deprivation of Liberty Safeguards. This is currently accessed through the Royal College of Psychiatry
- And in the 12 months prior to their selection have completed further training relevant to their role as a Mental Health Assessor

- Have a Criminal Record Bureau check
- Hold professional indemnity insurance

14.2 The provision of **Best Interest Assessors**, who is either:

- A registered Nurse, Social Worker, Occupational Therapist ,Chartered Psychologist or Approved Mental Health Practitioner
- With 2 years' post qualifying experience
- Who has successfully completed an appropriate training programme, as outlined by the Secretary of state, currently accessed via Bournemouth University
- And following initial training in the 12 months prior to selection completed further training relevant to their role as Best Interest Assessor
- Have a Criminal Record Bureau check
- Hold professional indemnity insurance (Best Interest Assessors employed by Devon County Council, Torbay County Council or Torbay and Southern Devon Health and Care NHS Trust will receive Corporate Indemnity insurance).

14.3 The provision of an **IMCA service** specific to the DoLS as people subject to the provisions have the right to an IMCA for support and advice (7.37-7.41 code of practice) (3.22-3.28 IMCA) Code of Practice

14.4 The provision of **Paid Representatives** to undertake the tasks outlined in the code of Practice for people who are unfriended and subject to the provisions of DoLS. If this is not possible for any reason an IMCA must be appointed for the duration that a paid representative is not available. Currently Paid Representatives will be accessed via the Independent Mental Capacity Advocate Service. (7.37-7.41 Paid Representative.) Code of Practice

## 15. Managing Authority

15.1 This is the care home or hospital where the proposed Deprivation of Liberty Safeguards will take place. The hospital may be public or private. A care home is one registered under the Care Standards Act 2000.

## 16. Key Responsibilities of Care Homes and Hospitals in Their Role as Managing Authorities:

16.1 To adapt care-planning processes to ensure consideration is given to whether a person has the capacity to consent (in accordance with the Mental Capacity Act 2005) to the services which are to be provided and whether their actions are likely to result in a Deprivation of Liberty.

16.2 To consider before admitting a person to a hospital or residential care home in circumstances that may amount to Deprivation of Liberty, whether the person's needs could be met in a less restrictive way. To ensure that any restrictions are the minimum necessary and in place for the shortest possible period.

16.3 To take steps to help the relevant person retain contact with family, friends & carers. Where local advocacy services are available, their involvement should be encouraged to support the person & their family, friends & carers.

- 16.4 To ensure clear and robust procedures are in place for staff to offer guidance and clarity on when a request for a standard authorisation would be required, and the procedures that should be followed in order to make an application to the Supervisory Body. This requires clear policy and guidance relating to the use of restraint and restrictive practices.
- 16.5 To ensure that no person, except in unpredictable circumstances, is deprived of their liberty unless a standard authorisation has been applied for and granted by the Supervisory Body for that specific situation and remains in force.
- 16.6 To obtain authorisation from the Supervisory Body in advance of the Deprivation of Liberty, except in urgent circumstances, in which case authorisation must be obtained from the Supervisory Body within seven calendar days of the start of the Deprivation of Liberty.
- 16.7 To comply with any conditions attached to the authorisation as requested by the Best Interest Assessor (BIA).
- 16.8 To ensure that applications for authorisation are not made as standard for all admissions to hospitals and care homes simply because the relevant person lacks the capacity to decide whether to be admitted. The referral process should be used appropriately and only when it is genuinely necessary for a person to be deprived of their liberty in their best interests.
- 16.9 To maintain effective communication and co-operation with the Best Interest Assessor(BIA), Mental Health Assessor (MHA) IMCA/Paid Rep, & Supervisory Body both during the assessment process and post authorization
- 16.10 To monitor whether the relevant person's representative maintains regular contact with the person.
- 16.11 To review the care plan on an ongoing basis giving consideration to the involvement of an advocacy service in the review. It should be noted that Deprivation of Liberty can be ended before a formal review.
- 16.12 To maintain records.
- 16.13 To issue Urgent Authorisation while applying for Standard Authorisation when required.
- 16.14 Managing Authorities must note that a failure to identify a potential Deprivation of Liberty might be construed as abuse (as defined by Devon and Torbay Multi Agency Safeguarding Adults Policy and Procedures in particular possible institutional and/ or, psychological abuse and/ or, neglect). In such circumstances, if it is the opinion of the DoLS service that this omission may constitute abuse, they must contact the Safeguarding Adults Team to agree ongoing DoLS and safeguarding arrangements that ensure the relevant person is protected

## **17. How and when can Deprivation of Liberty Safeguards be Applied for and Authorised?**

17.1 The following guidance seeks only to offer a brief outline of the application and authorisation process. For a full explanation of process and responsibilities - practitioners must refer to the Deprivation of Liberty Safeguards (DOLS) code of practice chapter 3.

17.2 Applications should be made using the standardised Department of Health documents available at:

[http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_089772](http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_089772)

## **18. Urgent Authorisation: – (Code of Practice Chapter 6).**

18.1 In exceptional circumstances, where Deprivation of Liberty needs to commence before a standard authorisation can be obtained, the Managing Authority can issue itself an urgent authorisation by completing Standard Form 1 which makes Deprivation of Liberty lawful for a short period up to 7 days.

18.2 A request for a standard authorisation by completing Standard Form 4 must be made simultaneously with the issuing of an urgent authorisation.

18.3 The Supervisory Body will need to undertake the same assessment process as for a standard authorisation, but within shorter timescales.

18.4 Managing authorities will need to ensure they have procedures in place to identify if authorisation for Deprivation of Liberty is required, or if it is necessary in exceptional circumstances to issue an urgent authorisation. Procedures should clearly identify who is responsible for taking action at this stage including signing applications.

18.5 Managing authorities will need to ensure every effort has been made to avoid Deprivation of Liberty. The DoLS service will be available for discussion and advice if required recognising that it is the Managing Authorities & their responsibility only to decide whether to make an application.

18.6 Where it is decided that an authorisation is required, the appropriate member of staff identified in the internal procedures should complete the standard application, Standard Form 4. Standard Form 4 should be sent, by secure nhs.net or gov.uk, e-mail or recorded delivery.

18.7 Once Standard Form 4 has been sent to the DoLS Service, the Managing Authority should, if judged appropriate/practicable, inform the family and carers of the relevant person that an application for a standard authorisation has been made. The Managing Authority should also keep a copy of Standard Form 4 and clear written records of the reasons for the application.

18.8 If the relevant person is already subject to a DoLS authorisation and a move is planned to another care home or hospital, the Managing Authority must apply to the Supervisory Body for a new authorisation following the procedures outlined above.

18.9 If a Managing Authority receives a request from a third party to apply for an authorisation or any other concern that implies Deprivation of Liberty, or a request to change the care regime the Managing Authority must normally respond to this request within 24 hours. Standard Letter 1 can be used for this, but the request. Where the Managing Authority has been unable to resolve the 3rd party request, i.e. where they have not been able to satisfy the 3rd party that no Deprivation of Liberty is occurring, they must submit an application to the DoLS Service following the procedures outlined above. Where the Managing Authority has failed to make an application, the Supervisory Body will accept a referral from the 3rd party. In the circumstances of all unauthorised DoLS the regulatory body will be notified. A record should be kept by both the Managing Authority and the Supervisory body of all third party requests that are resolved as well as those that progress.

## **19. Managing Authority Responsibilities re Urgent Authorisation's**

- 19.1 Managing Authorities should have a procedure in place giving clear guidance to staff about the actions, responsibilities and timescales required for issuing urgent authorisation's. This will need to include responsibility for signing urgent authorisation's and deputising arrangements.
- 19.2 Managing Authorities should refer to the Code of Practice for clear guidance governing the circumstances in which an urgent authorisation can and cannot be issued. Any care or treatment provided under an urgent authorisation must comply with Section 1 of the Mental Capacity Act 2005 and the relevant people must be consulted before granting an urgent authorisation.
- 19.3 The Managing Authority should use Standard Form 1 to inform the Supervisory Body that it has issued an urgent authorisation. This Standard Form together with Standard Form 4 should be sent to the DoLS service
- 19.4 The Managing Authority will need to keep records of urgent authorisation's issued and give written copies to the relevant person and any IMCA instructed. The relevant persons family, friends and carers should be notified in order to enable them to offer informed support to the person and the relevant person should be helped to understand the effects of the authorisation and their right to challenge via the Court of Protection (1.8 – 1.10 Code of Practice).

## **20. Terminating an Urgent Authorisation**

- 20.1 Once the assessment process is complete for the standard authorisation, the DoLS Service/Supervisory Body will need to complete standard Forms 12 or 13. At this point the urgent authorisation ceases.
- 20.2 The urgent authorisation will cease at the end of the period it was issued a maximum of 7 days (unless the Managing Authority has applied to the Supervisory Body to extend the urgent authorisation – see below).
- 20.3 The Supervisory Body must inform all relevant parties that the urgent authorisation has ended. If possible, this notification should be combined with the notification of the outcome of the assessment process for the standard authorisation.

## 21. Extending the Urgent Authorisation

- 21.1 In exceptional circumstances where the standard authorisation cannot be dealt with within the period of the urgent authorisation, the Managing Authority can apply to extend the period of the urgent authorisation for a maximum of a further 7 days by completing Standard Form 2. If any assessor believes they won't be able to complete in time they need to liaise with the Managing Authority at an early stage.
- 21.2 The Supervisory Body will need to determine whether or not to extend this urgent authorisation, and inform the Managing Authority of its decision by completing Standard Form 3. The relevant person and IMCA must also be informed where a request to extend an urgent authorisation is declined
- 21.3 Where the Supervisory Body agrees to extend the period of urgent authorisation and completes part H of Standard Form 1 (the original Standard Form that was used for the application), the Managing Authority is responsible for informing the relevant person and any IMCA instructed of the extension, both orally and in writing and informing them of their rights and assist their understanding.
- 21.4 Both the Managing Authority and Supervisory Body must ensure that the use of urgent authorisation's is recorded, monitored and audited as part of the Organisations governance procedures.

## 22. Standard Authorisation

This is requested by the Managing Authority from the Supervisory Body.

## 23. Receiving a request for Assessment for a Standard Authorisation:

- 23.1 Upon receipt of an application for a standard authorisation, the DoLS service will consider whether the application is complete or whether any additional information is required from the Managing Authority.
- 23.2 If the Standard Form 4 is incomplete/invalid, the DoLS Service will refer back to the Managing Authority for further information/necessary action. The application process will be restarted on receipt of the revised application/information.
- 23.3 If the DoLS Service considers that the application has been made too far in advance this should be resolved with the Managing Authority and the application process should be stopped and a new application should be made at a more appropriate time.
- 23.4 From the date of receipt of the referral standard Form, the DoLS Service will have **28 days in total in which to complete all assessments** and respond to the Managing Authority's request.
- 23.5 The DoLS service will plan the order of assessments taking into account the circumstances of the case starting with assessments that are most likely to be negative & the least resource intensive. This will make the most prudent use of resources and be less potentially confusing for the relevant person and their carers.

23.6 The DoLS service will commission the Best Interest Assessor and the Mental Health Assessor and provide clear guidance on the following:

- The required assessments
- The timescale within which the assessments must be completed and the report submitted to the DoLS service
- The name and contact details of the other relevant Assessor
- Any relevant care plans/risk assessments submitted by the Managing Authority.

#### **24. Independent Mental Capacity Advocate (IMCA)**

24.1 If the relevant person does not have somebody engaged in providing care or treatment (other than in a professional capacity or for remuneration) to support them, the DoLS Service will need to instruct an Independent Mental Capacity Advocate (IMCA). For details of the role & function of the IMCA see Sec 3.22 – 3.28 of the DoLS Code of Practice. Standard Form 30 should be used by the Supervisory Body to instruct the IMCA.

#### **25. Third Party Requests:**

25.1 The DoLS Service may receive referrals from a third party regarding an unauthorised Deprivation of Liberty – Standard DoLS Letter 2 (Appendix 1). The DoLS Service should keep a written record of the request.

25.2 The DoLS Service should consider the issue with the Managing Authority and decide whether to pursue the request further and appoint a Best Interest Assessor to assess whether there is an unauthorised DoLS.

25.3 Having received the Best Interest Assessor's report the Supervisory Body records its decision using Standard Form 18. The DoLS Service will give copies of the Supervisory Body decision to the 3rd party, the relevant person, the Managing Authority and any IMCA.

25.4 If the Deprivation of Liberty is occurring and is not already authorised the Managing Authority needs to issue itself an Urgent Authorisation, or cease the Deprivation of Liberty immediately. Refer to Chapter 9 of the DoLS Code of Practice for further Details on Third Party requests.

25.5 If the Deprivation of Liberty does not cease immediately the DoLS Service will commence assessments as per a Standard Authorisation for deprivation of liberty and the procedures outlined in this document will be followed.

25.6 The DoLS service must also consider whether the failure to consider a request for assessment by the Managing Authority is an act or omission that constitutes abuse (as defined by Devon and Torbay's Multi-Agency Safeguarding Adults Policy & Procedures). If it is the opinion of the DoLS service that this act or omission constitutes abuse they must contact the Safeguarding Adults Team to agree ongoing DoLS and safeguarding arrangements that ensure the relevant person is protected.

## 26. Assessment Process for a Standard Authorisation

### 26.1 Allocation of DoLS Assessors:

The DoLS Service will be responsible for appointing the Mental Health Assessor and the Best Interest Assessor. The choice of Assessor will be governed by:

- ensuring compliance with regulations
- knowledge of the relevant person
- skills and specialist knowledge for the relevant persons needs
- expedience of resources

26.2 Staff should refer to Section 4 of the Code of Practice for full guidance on each of the assessments, their purpose and how they should be conducted.

26.3 The Managing Authority must provide the Best Interest Assessor conducting the assessments with any relevant assessments or care plans and enable access to and copies of any records held that assessors or Independent Mental Capacity Advocate may consider relevant.

## 27. The Six DoLS Assessments

27.1 The following six assessments will normally need to be completed using the required DoH Standard forms

- **Age Assessment.** This assessment is to establish if the relevant person is aged 18 or over.
- **Mental Health Assessment.** This assessment must be conducted by a Mental Health Assessor. The purpose is to establish whether the relevant person is suffering from a mental disorder within the meaning of the Mental Health Act 1983.
- **Mental Capacity Assessment.** This establishes whether the relevant person lacks the capacity to consent to the arrangements proposed for their care or treatment. This will be conducted by the Mental Health Assessor. The Mental Health assessor may need to seek specialist advice for clients with specific communication needs.
- **No Refusals Assessment.** This establishes whether an authorisation for Deprivation of Liberty would conflict with other existing authority for decision making for that person, such as a valid and applicable Advance Decision to Refuse Treatment.
- **Eligibility Assessment.** This establishes whether the relevant person is subject to a requirement under the Mental Health Act 1983 that may conflict with an authorisation under DoLS or whether their care should be provided under the Mental Health Act. The Mental Health Assessor will generally complete the Mental Health Assessment, the Mental Capacity assessment and the Eligibility Assessments unless the Best Interest Assessor is an Approved Mental Health Practitioner.

- **Best Interest Assessment.** This assessment establishes whether the proposed Deprivation of Liberty is in the relevant person's best interests, is necessary to prevent harm and that the Deprivation of Liberty is proportionate to the likelihood and seriousness of the harm. This assessment must be conducted by the Best Interest Assessor and take into account submissions and/or information submitted by an IMCA. (3.23) CoP

- 27.2 **Equivalent Assessment.** An equivalent assessment is an assessment that has been carried out in the last 12 months, not necessarily for the purpose of a DoL authorisation, meets all the requirements of the DoL assessment, which the Supervisory Body is satisfied is accurate and of which the Supervisory Body has a copy. The Act states that where an equivalent assessment to any of the above six assessments has already been obtained, it may be relied upon instead of obtaining a fresh assessment.
- 27.3 There are additional duties during the assessment process.
- 27.4 The Best Interest Assessor should at this stage initiate identifying a **Relevant Person's Representative**, although this person will not actually be appointed until an authorisation is approved and confirmed in writing. Standard Form 24 should be completed.
- 27.5 The role of the Relevant Person's Representative is to maintain contact with the relevant person and to provide independent representation and support to the relevant person in all matters relating to the deprivation of liberty safeguards, including triggering a review.
- 27.6 The Code of Practice provides eligibility criteria for who can be the relevant person's Representative. At the assessment stage the Best Interest Assessor must identify if there is anyone they would recommend to become the relevant person's representative, and discuss their presentative role with the people interviewed during the assessment process (even though some of these assessments may not lead to an authorisation being granted).
- 27.7 If the relevant person does not have anyone who could act as the relevant person's representative, the Best Interest Assessor should inform the Supervisory Body. The responsibility for ensuring a relevant person's representative is appointed at the point of an authorisation being granted rests with the Supervisory Body. The Code of Practice provides detailed guidance on how the Best Interest Assessor should select the Relevant Person's Representative. Due regard to the personal attributes and diverse qualities of the relevant person should be considered.
- 27.8 The Best Interest Assessor should maintain contact with the Independent Mental Capacity Advocate throughout the assessment stage and identify and attempt to resolve any potential disagreements that may emerge with the Independent Mental Capacity Advocate. The Best Interest Assessor should attempt, wherever possible, to discuss with the Managing Authority any possible recommendations they intend to make in their report to ensure early remedial action in the event of an authorisation not being granted.
- 27.9 Assessors (BIA or MHA) will need to refer to the Safeguarding Adults Team, Devon and Torbay multi-agency Safeguarding Adults Policy & Procedures , when they have

concerns within the meaning of those procedures including where deprivation of liberty is affecting a number of people within a home or ward.

- 27.10 Assessors (BIA or MHA) should inform the DoLS administrator if problems are anticipated that may mean the assessment is not going to be completed within the statutory time limits.

## **28. Assessment outcomes**

- 28.1 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. Standard Form 13 should be completed by the DoLS Service on behalf of the Supervisory Body.
- 28.2 If all of the assessments are in agreement Standard Form 12 should be completed by the DoLS Service on behalf of the Supervisory Body
- 28.3 After Standard Forms 12 or 13 have been completed/checked, by the DoLS service they will forward them to one of the authorising signatories in the relevant Supervisory Body, who has responsibility for signing the report and officially granting or refusing the authorisation. They must consider any conditions and the duration of authorisation recommended by the Best Interest Assessor.
- 28.4 When authorisation is given a Relevant Person's Representative should be appointed based on the Best Interest Assessor's recommendations and the completion of Standard Form 24. This appointment should be confirmed in writing by completing Standard Form 25 which should be signed by the representative and copies sent to the following;
- The Managing Authority
  - The relevant person;
  - The relevant person's representative;
  - The IMCA (if required)
  - Any other persons consulted by the BIA.
- 28.5 Their representative must be given information and support to assist them in their role
- 28.6 If there is any delay in appointing a representative, or there is a period between the termination of one representative and the appointment of another, the Supervisory Body should appoint an Independent Mental Capacity Advocate to support the relevant person until a representative has been appointed. If there is any delay in appointing a representative the IMCA, where instructed as a 39a will remain involved.
- 28.7 Where authorisation is not supported the report will need to recommend alternative actions

## **29. Recording and notifying relevant parties of the decision**

- 29.1 Once the Signatory for the Supervisory body has signed the outcome report, it will need to be returned to the DoLS service for recording and disseminating. The DoLS service is responsible for ensuring the following:

- A copy of the Standard outcome form is kept and filed
- The outcome is recorded on the Organisation's electronic information data system either Care First in Devon or PARIS in Torbay.
- Written copies of the Standard outcome Form are sent to the following: The Managing Authority; the relevant person; the relevant person's representative; the Independent Mental Capacity Advocate (if required); any other interested persons consulted by the Best Interest Assessor.
- The relevant commissioning service of the Supervisory Body is informed of the outcome if required.

### **30. Responsibilities of the Managing Authority Once the Outcome Report has been Received**

- 30.1 If the Managing Authority receives Standard Form 12 stating that the authorisation has been granted, it must take all practical and possible steps to ensure that the relevant person understands the effects of the authorisation, their rights, the complaints procedures and consider any specific communication needs. Information should be provided to the relevant person, and to their representative, both orally and in writing.
- 30.2 Whether the authorisation is granted or not, the outcome report must be included in the relevant person's records and be made known to all relevant parties.
- 30.3 The Managing Authority must make alternative arrangements for care where authorisation is not granted, based on the recommendations made in the outcome report and ensuring urgent action to prevent unlawful Deprivation of Liberty.
- 30.4 The relevant person and their representative must be provided with information regarding how to appeal against a decision and how to access the Court of Protection.
- 30.5 Visits by the representative must be accommodated and details of visits are to be recorded in the relevant person's records.
- 30.6 Must inform the DoLS Service if the representative is not maintaining appropriate contact.
- 30.7 Must inform the DoLS Service where the relevant person or their representative requests an Independent Mental Capacity Advocate noting only non-paid representatives are entitled to an Independent Mental Capacity Advocate.

### **31. Actions to be undertaken by the Supervisory Body and Managing Authority where liberty is being deprived but the requirements for authorisation are not met**

- 31.1 Where the Supervisory Body refuses authorisation for Deprivation of Liberty because one of the requirements are not met, but agrees that Deprivation of Liberty is occurring, depending on which of the six requirements are not met the Managing

Authority, along with the Supervisory Body will need to take appropriate alternative action.

## 32. Assessments

- 32.1 **Age Assessment-** If this assessment does not meet the requirements for authorisation because the relevant person is under the age of 18, the Managing Authority will need to refer the case to the relevant children's services and use of the Children Act 1989 or Mental Health Act 1983 may be considered.
- 32.2 **Mental Health Assessment-** If this assessment does not meet the requirement for authorisation because the relevant person does not have a mental disorder as defined by the Mental Health Act 1983, the Managing Authority cannot legally detain the relevant person without their permission.
- 32.3 **Mental Capacity Assessment** -If this assessment does not meet the requirement for authorisation and it is found that the person does have the mental capacity to make decisions about their care; it is unlawful to deprive them of their liberty against their will.
- 32.4 **Best Interests Assessment** -Where this assessment does not meet the requirement for authorisation because Deprivation of Liberty is deemed not to be in the relevant person's best interests, the care plan will need to be amended to avoid unlawful Deprivation of Liberty.
- 32.5 **Eligibility Assessment** -If this assessment does not meet the requirement for authorisation because the relevant person was identified as needing to be subject to the Mental Health Act 1983 instead of the Deprivation of Liberty Safeguards, an assessment will need to be made under the Mental Health Act 1983. A referral should be made to the Mental Health service.
- 32.6 **No Refusals Assessment** - Where this assessment does not meet the requirement for authorisation because there is a valid refusal from a donee or deputy or where an applicable and valid Advance Decision to Refuse Treatment (ADRT) is in place, alternative arrangements for care or treatment will need to be made.

## 33. Reviews and Ending the Authorisation

- 33.1 A Standard Authorisation can be reviewed at any time and will be undertaken by the DoLS service on behalf of the Supervisory Body. Reviews will be conducted where any of the statutory grounds for review as stated in the Code of Practice are met, or where the Managing Authority, the relevant person or their representative requests a review. The Managing Authority can request a review by completing standard Form 19.
- 33.2 Deprivation of Liberty can end before a formal review. An authorisation only permits Deprivation of Liberty; it does not mean that the person must be deprived where a change of circumstance no longer necessitates it.

### 34. Supervisory Body Responsibilities

- 34.1 The DoLS Service must be aware of the statutory grounds for conducting reviews as stated in the Code of Practice. If the statutory grounds are met, the DoLS Service must carry out a review.
- 34.2 The DoLS Service must also conduct a review where it has been requested by the Managing Authority, the relevant person or the relevant person's representative.
- 34.3 Where a Managing Authority applies to the DoLS Service again for re-assessment due to the imminent expiry of the current Standard Authorisation, the DoLS Service will need to re-institute the assessment process.
- 34.4 Once a request for a review has been received, the DoLS Service should acknowledge receipt of the request and its plans for conducting the review, in writing and within **24 hours** of the request being received. Standard Form 20 should be used to inform the relevant person their representative and the Managing Authority of their intention to conduct a review.
- 34.5 DoLS Service will need to determine which of the requirements needs to be reviewed and whether any further action is required. Standard Form 21 should be used.
- 34.6 In general, the reviews should follow the same process as the standard authorisation for each of the qualifying requirements that need to be reviewed. The DoLS Service will have **21 days** in total in which to complete the review.
- 34.7 Following the review assessors will need to forward their reports to the DoLS service
- 34.8 The DoLS service will need to complete Standard Form 22 detailing the outcome of the reviews and required actions before forwarding to the relevant Supervisory Body's authorising signatories.
- 34.9 This may include:
- Re-assessed requirements still support Deprivation of Liberty Assessor reports (Form 5,1,7,8,9,or 10 depending on what has been re-assessed) and review results (Form 22)
  - Varying the conditions attached to the authorisation through completion of Standard Forms 22 & Form 10
  - Terminating the authorisation where the Deprivation of Liberty is no longer required or where any requirement is no longer met by completing Standard Forms 23, 21 & 27 and 22.
- 34.10 A copy of the Standard Form 22 plus all re-assessed reports will need to be sent to the Managing Authority, the relevant person, their representative, any Independent Mental Capacity Advocate instructed and any other persons consulted during the review.
- 34.11 The DoLS Service will keep records of any information received by the Managing Authority relating to the review and record any outcomes of the review in the relevant person's records.

### **35. Appeals to the Court of Protection about an authorised Standard Deprivation of Liberty Safeguards application. (s21 MCA)**

35.1 The Court of Protection, established by the Mental Capacity Act 2005, exists to allow anybody deprived of their liberty the right to speedy access to a court that can review the lawfulness of their Deprivation of Liberty. It is the responsibility of the Managing Authority to ensure that the relevant person and their representative is aware of their rights to apply to the court both before the authorisation is granted and afterwards and that they have the information required in order to make a referral to the Court.

35.2 The relevant person and their representative should be made aware of the types of questions/issues they can take to the Court as stated in the Code of Practice. The Managing Authority and the Supervisory Body should endeavor to resolve any concerns through mediation, or their own complaints procedures before the relevant person or their representative refer the matter to the Court. The Managing Authority and Supervisory Body are required to comply with any conditions imposed by the Court following a hearing.

### **36. Making Applications to the Court to challenge an authorised standard Deprivation of Liberty safeguard**

36.1 Guidance on court procedures is available on the website of the office of the Public Guardian, <http://www.justice.gov.uk/about/opg>

36.2 Any application on behalf of the Local Authority to the Court of Protection would be made in conjunction with the County Solicitor.

36.3 The following have an automatic right of access to the Court of Protection and can make an application:

- The Person who lacks or is alleged to lack capacity.
- The donor of a Lasting Power of Attorney or their donee
- A Deputy appointed by the court
- Anyone named in an existing court order
- The person's appointed Representative.

### **37. Out of Area Assessments**

37.1 When deciding which Local Authority is responsible for assessing an individual living in a registered care home, the rules of 'ordinary residence' apply:

*'Where the DoLS are applied to a person in a care home...the Supervisory Body will be the Local Authority for the area in which the person is ordinarily resident. If the person is not ordinarily resident in the area of any Local Authority (for example, a person of no fixed abode), the Supervisory Body will be the Local Authority for the area in which the care home is situated'* (CoP 3:3).

37.2 This means that a Local Authority placing a person outside their area will maintain responsibility for that person's care; their place of ordinary residence does not change. To determine the place of ordinary residence, the principles and mechanisms under the 1948 National Assistance Act will apply. ([Ordinary Residence - Law, Policy and Procedure \(revised 2005\)](#)).

- 37.3 When there is a dispute about where the relevant person is ordinarily resident, the Supervisory Body will be the Local Authority for the area in which the care home /hospital is situated, until the matter is resolved.
- 37.4 For out of area placements, when the relevant person is in a hospital or care home outside of Devon or Torbay but Devon or Torbay is the Supervisory Body, the Protocol for the Inter-Authority Management of Deprivation of Liberty Applications (ADASS guidance) can be used.
- 37.5 The DoLS Service will co-operate with other Supervisory Bodies to ensure that the best interests of any potential relevant person is met.

### **38. Relationship between the Mental Capacity Act and Mental Health Act**

- 38.1 In cases where there are issues of mental capacity and mental illness – consideration needs to be given to whether the Mental Health Act (1983) is the more appropriate response. (See Eligibility Guidance DoLS Code of Practice Paragraphs 4.40 – 4.57)
- 38.2 Professionals may need to think about using the MHA to detain a person and treat their mental disorder if they lack capacity to consent to treatment (rather than use the MCA), if:
- It is not possible to give the person the care or treatment they need without doing something that might deprive them of their liberty,
  - The person needs treatment that cannot be given under the MCA (for example, because the person has made a valid and applicable advance decision to refuse an essential part of treatment),
  - The person may need to be restrained in a way that is not allowed under the MCA,
  - It is not possible to assess or treat the person safely or effectively without treatment being compulsory (perhaps because the person is expected to regain capacity to consent, but might then refuse to give consent).
  - The person lacks capacity to decide on some elements of the treatment but has capacity to refuse a vital part of it – and they have done so, or
  - There is some other reason why the person might not get treatment, and they or somebody else might suffer harm as a result.
- 38.3 If the Person is resident anywhere other than in a Psychiatric Ward, before making an application under the MHA, Decision-Makers should consider whether they could achieve their aims safely and effectively by using the MCA instead.

### **39. Safeguards for the Person Involved**

- 39.1 As described in the first part of this guidance, the Safeguards were designed to ensure the 'relevant person' (person to who the safeguards may apply) has access to

appeal any deprivation of their liberty and a legally robust process to ensure they are only deprived of their liberty in the right circumstances. The people involved in such situations are most likely to be amongst the most vulnerable in our society and need advocacy and support to ensure their rights and best interests are preserved, (see MCA Code of Practice chapter 5 for best interests). The safeguards therefore place a duty on the Supervisory Body to ensure the relevant person has a suitable representative to support them during the assessment phase and any period of authorisation, where it is given.

#### **40. Deprivation of Liberty Safeguards Training and Accreditation**

- 41.1 A wide range of staff, organisations, and stakeholders need to have a good working knowledge of the Mental Capacity Act 2005, in order to be able to apply the Deprivation of Liberty Safeguards to practice. It is a requirement of the law that the 'Act must' be used when required. As such, training on the Mental Capacity Act and Deprivation of Liberty Safeguards is available to all staff including those of partner agencies and the private sector.
- 41.2 Within Devon and Torbay training is available for statutory, independent sector and voluntary organisations involved in the Mental Capacity Act 2005 and Deprivation of Liberty Safeguards. Opportunities include e-learning, workshops, and more detailed sessions combining MCA, DoLS and Safeguarding Adults. Further information on training opportunities can be found:

In Devon at:

<http://www.devon.gov.uk/index/socialcarehealth/scwd/scwd-safeguarding-adults.htm>

In Torbay at:

<http://www.tsdhc.nhs.uk/ourservices/SafeguardingAdults/Pages/Default.aspx>

#### **41. Best Interest Assessor Training**

- 41.1 Devon and Torbay DoLS service will ensure that all Best Interest Assessors will have undertaken accredited courses, be directed to maintain a portfolio of professional practice specific to this area of work, and will provide BIA's with updated training as per the statutory requirements.
- 41.2 BIA training opportunities will be offered to 'Eligible' staff across Devon and Torbay on a bi annual basis.

#### **42. Mental Health Assessors (section 12 Drs)**

- 42.1 Devon County Council and Torbay and Southern Devon Health and Care NHS Trust have jointly entered into a contract with Devon Partnership Trust who will ensure the on-going Recruitment, Approval and Re-Approval process for s12 Mental Health Assessors as per statutory requirement. Devon Partnership Trust will ensure there is an appointed Deprivation of Liberty Safeguards Clinical Lead to oversee the requirements of the contract, and in addition provide any necessary clinical supervision.

42.2 Devon County Council and Torbay and Southern Devon Health and Care NHS Trust will jointly monitor the contract with Devon Partnership on a quarterly basis. Information from the contract monitoring process will be reported to the respective Safeguarding Adult Boards.

### **43. Information Sharing**

43.1 The act places requirements upon Managing Authorities and Supervisory Bodies to share information with certain parties when they are undertaking statutory activity under the act. The code details these circumstances in the various sections relating to the differing aspects of the act.

43.2 In addition to the directions in the code of practice, the following good practice principles on information sharing may assist but should not override the directions given in the code of practice. If you have any queries about information sharing, discuss with your line manager in the first instance.

- Is the disclosure covered by the Data Protection Act 1989?
- Is the request being made by a formally authorised representative such as an LPA, EPA, Deputy, IMCA, Court of Protection appointed visitor?
- Is the disclosure legal?
- Is the disclosure justified having balanced the person's Best Interests and the public interests against the person's right to privacy?
- Do I have the information required?
- Am I satisfied that the person concerned lacks the Capacity to agree to the disclosure?
- Am I satisfied that the person making the request for the information is: -  
Acting in the Best Interests of the person concerned?

### **44. Record Keeping**

44.1 All issues relating to Mental Capacity Assessments and DoLS must be recorded in the person's notes. All record keeping should be in line with the organisations policy and professional guidelines.

### **45. Torbay and Southern Devon Health and Care NHS Trust and Devon County Council contact details:**

45.1 Torbay and Southern Devon Health and Care NHS Trust

#### **Address**

DoLS Team  
3<sup>rd</sup> Floor Union House  
Union Street  
Torquay  
Devon  
TQ1 3YA

In Torbay, the central Deprivation of Liberty Safeguards information line is available during the hours of 9am to 1pm every weekday

**Tel number:** 01803 219832 to assist with information relating to the MCA and DOLS.

**Secure fax line:** 01803 219863

**Email:** [dolstorbay@nhs.net](mailto:dolstorbay@nhs.net)

Where advice is required during the afternoon the 'Single Point of Contact for Safeguarding Adults' can be contacted: 01803 219888

#### 45.2 Devon County Council

**Address**

DoLS Team  
Ground Floor Annexe  
County Hall  
Topsham Road  
Exeter  
Devon  
EX2 4QR

**Tel no:** 01392 381676 to assist with information relating to process in light of the above circumstances and any other issues relating to the MCA and DOLS.

In Devon the central Deprivation of Liberty Safeguards Information line is available during normal working hours:

**Secure fax line:** 01392 383327

**Email:** [dols@devon.gov.uk](mailto:dols@devon.gov.uk)

All DoLS applications for a Devon Supervisory Body will be managed and coordinated via this central team.

- 45.3 All applications will be directed to the DOLS Administrator (as per the above contact details). Due to short time scales we will accept faxed copies via our secure mailbox. However, when applications are faxed we also require that hard copies are sent either via post by next day delivery or hand delivered. All applications will be confirmed on receipt. We will also liaise with the managing authority involved about the arrangements for progressing the application process.

For all urgent applications, due to the limited timescales involved, we request that they are hand delivered or sent by post by next day delivery.

## Appendix 1

Below is a précis of **SCIE Guidance 41** IMCA AND Paid representative's roles in the Mental Capacity Act Deprivation of Liberty Safeguards.

Bits of this may be useful in guidance.

**Section 39A IMCAs:** Instructed when there is an assessment in response to either a request for a standard authorisation or a concern about a potentially unauthorised deprivation of liberty. The Supervisory body should instruct 39A IMCAs as soon as it is aware that this is required. Any delay could mean that the person has not been provided the representation required under the Deprivation of Liberty Safeguards. This could affect the lawfulness of any deprivation of liberty.

39A IMCAs may be instructed when a standard authorisation is not currently in place There are two possibilities:

- A request has been made for a standard authorisation.
- A best interests assessor has been appointed by the supervisory body to check whether a person is being unlawfully deprived of their liberty.

Their role is to represent the person in the assessments which will be done . In both cases the person should have no one appropriate to consult This means having: *"no person, other than engaged in providing care or treatment for P in a professional capacity or for remuneration, whom it would be appropriate to consult in determining what would be in P's best interests"* (MCA Section

**Section 39C IMCAs:** Cover the role of the relevant person's representative when there is a gap between appointments. The 39C IMCA role can be understood as covering gaps (but not all gaps) in the appointments of relevant person's representatives. The role ends when another relevant person's representative is appointed.

39C IMCAs must be instructed when a standard authorisation is in place if:

- The appointment of a relevant person ends, and
- There is no-one appropriate to consult who could represent the person's best interests.

39C IMCAs have the powers of the relevant person's representative to demand a review and non-means tested access to the Court of Protection.

**Section 39D IMCAs:** Provided to support either the person or their relevant person's representative when a standard authorisation is in place. 39D IMCAs are only available when a standard authorisation is in place and the person has an unpaid relevant person's representative.

If these conditions are met, 39D IMCAs must be instructed if:

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

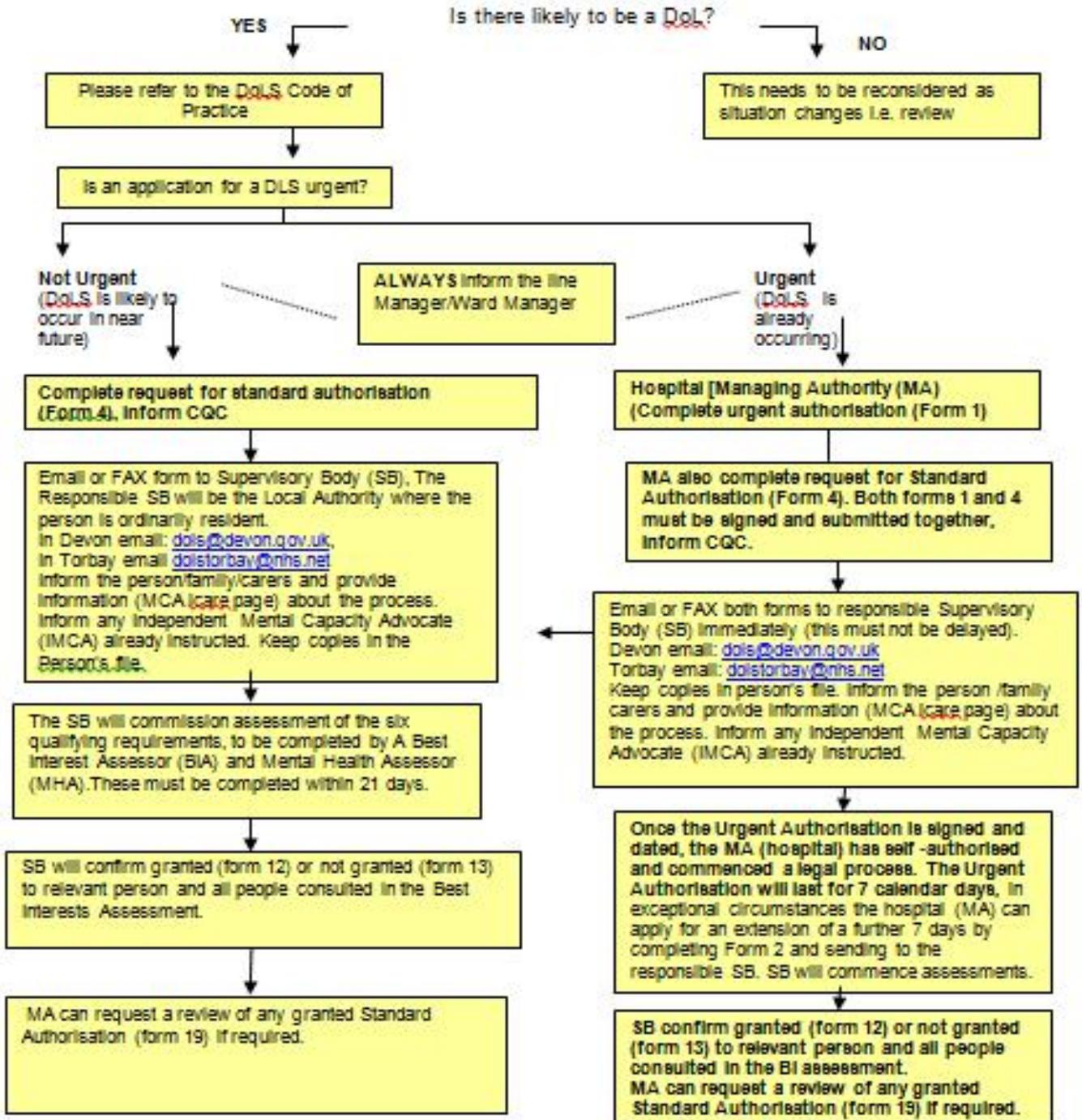
**Section 39E** of the amended MCA puts limits on having more than one 39D IMCA instruction at the same time. The only time when there must be a second 39D IMCA instruction is when the person themselves asks for this, and this was not the reason for the first 39D IMCA instruction. The expectation should be that this role is undertaken by a different IMCA who can act independently from the first.

It is appropriate for 39D IMCAs to explain to the person the option of a second 39D IMCA. This may be particularly important when there is conflict between the person and their representative.

Best Interest Assessors or Mental Health Assessors are required to take into account any information given or submissions made by IMCAs and paid representatives (Section 132 of the amended MCA. This could include:

- Meetings or phone conversations with the assessor
- Emails to the assessor
- A written report

### Deprivation of Liberty Safeguards (DoLS) Process Flowchart



Staff must be aware of the type of restrictive measures there are in a person's care plans/arrangements at all times and consider 1) How many there are, 2) How long they have been in place 3) The effect the care arrangements are having on the person. When the restrictive measures are absolutely necessary to protect the person from harm and the outcome cannot be achieved in a less restrictive way, staff must consider the DoLS policy or seek advice.

Devon: DoLS team, The Annex, County Hall, Exeter EX2 4QR Tel: 01392 381676, email: [dols@devon.gov.uk](mailto:dols@devon.gov.uk)  
 Torbay: DoLS team, 3<sup>rd</sup> Floor Union House Union Street, Torquay. Tel: 01803 219832, email: [dolstorbay@nhs.net](mailto:dolstorbay@nhs.net)