Mental Capacity Act (2005) Deprivation of Liberty Safeguards (DOLS) – Practice Guidance
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1 INTRODUCTION

This Guidance is for staff working within South Tyneside Council. It concerns adults who lack the capacity to consent to their care and treatment in circumstances that might be considered a ‘deprivation of liberty’. This Guidance must be read in conjunction with the Mental Capacity Act (MCA) 2005 Code of Practice and the Deprivation of Liberty Safeguards (DoLS) Code of Practice, and associated regulations.

This document will provide guidance around the deprivation of liberty processes for the mental capacity act manager and the local processes for Managing Authorities and the Supervisory Body. It will provide information about specific roles in these processes, their responsibilities and how these should be applied when an application has been received by the manager for the purpose of assessing a situation or circumstance in a hospital or care home registered under the Care Standards Act (2000) that may amount to a deprivation of liberty.

The term ‘deprivation of liberty’ is used to describe individuals who lack capacity to consent to particular treatment or care that is recognised by others as being in their best interests, or which will protect them from harm and where that treatment or care involves placing restriction upon individuals to such a degree or intensity that they may amount to a deprivation of liberty.

In the context of deprivation of liberty the capacity test is specifically concerned with whether the relevant person has the capacity or not to consent to care or treatment which involves being kept in hospital or care home in circumstances that amount to a deprivation of liberty at the time the decision needs to be made.

Although section 5 of the MCA 2005 permits the use of restraint where necessary under certain conditions, section 6(5) confirms that there is no protection under the MCA 2005 for actions that result in someone being deprived of their liberty as defined by Article 5(1) of the European Convention on Human Rights (ECHR). Sometimes there is no alternative way to provide care of treatment other than depriving the person of their liberty. In this situation, some people may be detained in hospital under the Mental Health Act (2007), otherwise actions that amount to a deprivation of liberty will not be lawful unless formal authorisation is obtained. Depriving someone of their liberty can be a necessary requirement in order to provide effective care or treatment, the deprivation of liberty safeguards protect the relevant person’s rights and ensure that the care or treatment they receive is in their own best interests.

The Deprivation of Liberty Safeguards were introduced to provide a legal framework around the deprivation of liberty. Specifically they were introduced to prevent breaches of Article 5 of the ECHR.
The Mental Capacity Act 2005 provides a statutory framework for acting and making decisions on behalf of individuals who lack the mental capacity to do so for themselves and introduced a number of safeguards to protect these individuals and ensure that they are given every chance to make decisions for themselves. The safeguards focus on some of the most vulnerable people in society who lack capacity and ensure that deprivation of liberty, where it does occur has a lawful basis. These safeguards are an important way of protecting the rights of many vulnerable people in hospitals or care settings registered under the Care Standards Act 2000 and include rights to:

- an independent representative to act on their behalf
- the support of an Independent Mental Capacity Advocate (IMCA)
- have their deprivation of liberty reviewed and monitored on a regular basis
- challenge their deprivation of liberty in the Court of Protection

### 2 TERMINOLOGY

To ensure consistency within this document the term 'relevant person' will refer to service users, or patients being assessed in relation to the Deprivation of Liberty safeguards. In addition the phrase ‘managing authority’ will be used wherever possible to refer to the hospital or care home setting in which the relevant person is residing. The term 'supervisory body' (SB) will usually refer to South Tyneside Council. However in some situations the relevant Supervisory Body could be an 'external' Council who are commissioning an adult's care within another area.

Principles of confidentiality should be applied to any work undertaken within the DoLS. Guidance on local arrangements will be available via the South Tyneside Information Sharing Protocol.

Any reference to Safeguarding Adults Policy and Procedures means those agreed by the Multi Agency Partnership for the relevant area in which the adult is living.

### 3 ACCESS TO INFORMATION AND RECORD KEEPING

Staff must be familiar with the principles regarding access to records and the sharing of information with the DoLS process. Point 4.63 of the DoLS Code of Practice sets out that the Best Interest Assessor (BIA) must consult with the Managing Authority and examine and take copies of any relevant needs assessments and care plans prepared for the person. BIA's should list in their specific assessments which records they have examined.
There is a statutory requirement for the SB 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 RPR and the documentation related to the termination of the authorisation. Managing Authorities such as care homes or hospitals are also required to keep duplicate records.

The MCA Manager will retain a master hard copy (and an electronic one where possible) of documents relating to each case. The SB, BIA and Care Quality Commission would be able to access these where appropriate.

To facilitate this process within South Tyneside, the supervisory body, best interest assessors, mental health assessors, IMCA and managing authorities will use standard forms created through the previous Local Consolidation Network Group.

The forms are not a statutory requirement and do not have to be used to support the administration of the MCA DoLS. However, when used they must be unedited to ensure compliance with the requirements of the safeguards and to promote a consistent approach to record keeping.

4 WHAT IS ‘DEPRIVATION OF LIBERTY’

There is no clear definition of deprivation of liberty and whether someone is deprived of his or her liberty will depend upon whether a particular combination of measures in place, taken together, constitutes a deprivation. Chapter 2 of the DoLS Code of Practice (COP) deals with this issue in some detail. ‘to determine whether these has been a deprivation of liberty, the starting point must be the specific situation of the individual concerned and account must be taken of a whole range of factors arising in a particular case such as the type, duration, effects and manner of implementation of the measure in question. The distinction between a deprivation of and restriction upon, liberty is merely one of degree or intensity and not one of nature of substance’ (EctHR (2004) said in relation to HL v the United Kingdom: Code of Practice 2.2).

Each case should be judged on its facts although, clearly, the shorter the duration the less likely that the Court is to consider that somebody had been deprived of their liberty. The Department of Health takes the view that hospitals or care homes that operate a “locked door” policy are not necessarily depriving of liberty those people who reside in the facility (Impact Assessment of the Mental Capacity Act 2005 deprivation of liberty safeguards to accompany the Code of Practice and regulations 2008 p8). However each case must be considered individually.
The EctHR and UK courts have determined a number of cases about deprivation of liberty. Their judgements indicate the following factors can be relevant to identifying whether steps taken involve more than restraint and amount to a deprivation of liberty.

- Restraint is used, including sedation, to admit a person to an institution where that person is resisting admission.
- Staff exercise complete and effective control over the care and movement of a person for a significant period.
- Staff control contacts and residence.
- A decision has been made by the institution that the person will not be released in the care of others or permitted to live elsewhere unless staff consider it appropriate.
- Request for discharge by the carer of a person is refused.
- The person is unable to maintain social contacts because of the restrictions placed on their access to other people.
- The person loses autonomy because they are under continuous supervision and control.

This is not an exhaustive list and each case must be considered in relation to its individual circumstances and factors contributing to a potential deprivation of liberty. Likewise whilst one incident in and of itself is unlikely to equate a deprivation of liberty, the cumulative effect of one or two incidents may highlight the existence of a deprivation of liberty rather than of permissible restraint.

### 5 USE OF RESTRAINT

Section 6 (4) of the Mental Capacity Act (2005), Paragraph 6.40 of the MCA Code of Practice states that someone is using restrain if they:

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

Any action intended to restrain a person who lacks capacity will not attract protection from liability unless the following two conditions are met:

- The person taking the action must reasonably believe that restraint is necessary to prevent harm to the person who lacks capacity and
- The amount of and type of restraint used and the amount of time it lasts must be a proportionate response to the likelihood and seriousness of harm.
A proportionate response means using the least restrictive type and minimum amount of restraint to achieve a specific outcome in the best interest of the person who lacks capacity.

The EcrtHR has indicated that the duration of any restrictions is a relevant factor in considering whether or not a person is deprived of their liberty. This suggests that actions that are immediately necessary to prevent harm may not in themselves constitute a deprivation.

However where the restriction or restrain is frequent, cumulative and ongoing or if there are other factors present, care providers and best interest assessors should consider whether this has gone beyond permissible restraint as defined within the Mental Capacity Act (2005). If this is so then a request for authorisation should be requested under the deprivation of liberty safeguards (Chapter 7 of the DoLS COP deals with this further).

6 WHO IS COVERED BY THE DEPRIVATION OF LIBERTY SAFEGUARDS?

The DoLS cover patients in hospitals or people in care homes registered under the Care Standards Act (2000), whether placed under public or private arrangements.

The safeguards apply to people aged 18 and over who:

(i) suffer from a mental disorder or disability of mind

and

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

and

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

These safeguards cannot be used to detain people to hospital for the purposes of treatment for a mental disorder or disability of mind in situations where the Mental Health Act (2007) could be used where the person is objecting to treatment and satisfy the grounds for compulsory detention for that purpose.

This will mean that people who lack capacity and are objecting to treatment will be treated in the same way as those people with capacity refusing treatment for mental disorders and who require compulsory detention as a result.
The DoLS are not extended to those people living in their own homes, supported accommodation, or sheltered housing schemes. Should a person in any of these settings who is or who is at risk of being deprived of their liberty an application should be made to the Court of Protection (Consult Legal Department)

The DoLS introduce a number of authorisations and safeguards to ensure that the person lacking capacity and subject to an authorisation has appropriate representation and that any such deprivation has a legal basis.

There are two types of authorisation:

- **Urgent Authorisations**, given by the MA to itself for up to 7 days. But they must at the same time also apply to the SB for a Standard authorisation. In these cases all assessments for the Standard Authorisation must be completed within 7 days.
- **Request for a Standard Authorisations.** Assessments must be completed within 21 days.

The BIA can recommend a Standard Authorisation for up to twelve months with regards to individual cases and relevant circumstances but the SB can grant it for less.

An authorisation can only be granted by the SB on the basis that the following six assessments are successfully completed in writing and the requirements within the assessment are satisfied. If any of the six assessments are unsuccessful then an authorisation cannot be granted and the managing authority is responsible for ensuring that a deprivation of liberty is no longer taking place and appropriate review of the care arrangement have taken place.

The six assessments are:

- **Age**
- **Capacity**
- **Mental Health**
- **Eligibility**
- **No Refusals**
- **Best Interest**

In addition the DoLs introduce a number of additional safeguards including:

- **Relevant Persons Representative**
- **Extending the role of the Independent Mental Capacity Advocate**
- **Referrals to the Court of Protection**.
7 DETERMINING ORDINARY RESIDENCE

Where a person is provided with residential accommodation he shall be deemed to be ordinarily resident in the area in which he was ordinarily resident immediately before residential accommodation was provided for him. Where a person in the area of a local authority is a person with no settled residence, or not being ordinary resident in the area is in need of urgent residential accommodation, the authority shall have the like power to provide residential accommodation as if they were ordinarily resident in their area.

A local authority has the power to provide residential accommodation for a person ordinarily resident in the area of another authority, providing they have the consent of that authority to do so.

A patient in an NHS hospital, including hospitals that are part of an NHS Trust, shall be deemed to be ordinarily resident in the area if any in which he was ordinary resident immediately before he was admitted as a patient to the hospital. The test of ordinary residence is not the same as that of local connection used in the homelessness legislation for establishing which housing authority has the responsibility for securing accommodation for homeless applicants in priority need. When a person states that he has no settled residence or describes himself as No Fixed Abode (NFA) the social services authority where he presents himself should normally accept responsibility.

Where an application is made and the Supervisory Body does not consider that the person concerned is Ordinarily Resident within South Tyneside the Supervisory Body will immediately forward the application to the Supervisory Body identified by them to be responsible. Any dispute between Local Authorities in relation to where an individual is Ordinarily Resident may ultimately be determined by application to the Secretary of State.

If the adult is placed away from the North East then the SB may request another SB commission the assessments required by the DoLS for the purpose of authorisation. Where the SB and MA are one and the same they must not use their own employee as a BIA. In those circumstances please refer to the ADASS Protocol for the Inter-Authority Management of Deprivation of Liberty Safeguards Applications and local reciprocal arrangements, indemnity and insurance guidance.

8 MENTAL CAPACITY

The Mental Capacity Act (2005) provides a statutory framework for people who lack capacity to make decisions for themselves, or who have capacity and want to make preparations for a time when they may lack capacity in the future.
The Mental Capacity Act (2005) also sets out five statutory principles, whose aim is the protect people who lack capacity and help them take part, as much as possible, in decisions that affect them. The statutory principles apply to any act done or decision made under the Act.

The five statutory principles are:

- ‘A person must be assumed to have capacity unless it is established that he lacks capacity.’ (section 1(2))
- ‘A person is not to be treated as unable to make a decision unless all practical steps to help him to do so have been taken without success.’ (section 1(3))
- ‘A person is not to be treated as unable to make a decision merely because he makes an unwise decision.’ (section 1 (4))
- ‘An act done, or decision made, under the Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.’ (section 1 (5))
- ‘Before an act is done, or the decision is made regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person’s rights and freedom of action.’ (section 1 (6))

Further guidance and clarification of capacity issues can found in Chapter 4 of the MCA Code of Practice.

9 CAPACITY TEST

The testing of capacity is decision specific. Some decisions require greater capacity than others, for example an individual may be assessed as lacking capacity to manage complex financial matters but does have capacity to make some decisions around their personal care.

When determining if someone has capacity the following tests should be applied:

9.1 THE TWO-STAGE TEST

- Does the person have an impairment of mind or brain, or is there some sort of disturbance affecting the way their mind or brain works?
- If so, does that impairment or disturbance mean that the person is unable to make the decision in question at the time it needs to be made?

9.2 THE FUNCTIONAL TEST FOR CAPACITY
The Decision Maker should apply following the two-stage test the functional test, within the DoLS this could be the Best Interest Assessor or the Mental Health Assessor. They must ask:

- Do they have an understanding of what decision they need to make and why then need to make it?
- Do they have an understanding of the likely consequences of making or not making the decision?
- Are they able to understand, retain, use and weigh up the information relevant to the decision?
- Can they communicate their decision by any means, including via an interpreter or with the help of a speech and language therapist or communication aids?

(Chapter four of the MCA Code deals with these issues). In South Tyneside these are known as MCA1 and MCA2.

10 THE DOLS PROCEDURE FOR SOUTH TYNESIDE

10.1 APPLICATION AND ALLOCATION PROCESS

There are some circumstances in which depriving a person who lacks capacity to consent to the arrangements made for their care or treatment, of their liberty is necessary to protect them from harm and is in their best interests. Such decisions should not be taken lightly and the DoLS Code of Practice makes it clear that a person may only be deprived of their liberty:

- In their own best interests to protect them from harm
- If it is a proportionate response to the likelihood and seriousness of harm and
- If there is no less restrictive alternative.

It is expected that in most cases it should be possible to plan in advance (up to 28 days) so that a standard authorisation can be obtained before the deprivation of liberty takes place. Deprivation of liberty should be considered upon the admission process or referral process to any registered care setting to ensure that all care planning and least restrictive options have been considered to prevent a deprivation in the first instance.

However there will be some exceptional circumstances where the relevant person is already being deprived of their liberty and therefore the MA must grant itself an urgent authorisation in order to legalize the situation.

Although the main responsibility for identifying and referring a relevant person for a DOLS authorisation lies with the MA, the role is also conferred on the SB with overall responsibility for the placement and upon its staff who would be expected
to highlight any DOLS issues with the managing authority. Third parties may also raise concerns with the MA about potential DOL and if unresolved can approach the SB. Chapter three of the DoLS Code of Practice considers how and when a deprivation of liberty can be applied for, authorised, and outlines what MA’s should consider before applying for an authorisation. Once the SB has received an appropriate application it must follow the assessment process before it can authorise a deprivation of liberty.

It is anticipated that prior to requesting an authorisation the MA will have considered all least restrictive options first. In addition they will have also completed the Mental Capacity Assessment and Making Best Interest Decisions Form to establish if the relevant person indeed lacks capacity. To obtain an authorisation MA’s will have to make a written application on the appropriate standard forms to the relevant SB. The standard forms are available from the MCA manager

mca.dol@southtyneside.gov.uk

The MA is responsible for ensuring that all applications include the relevant information and this will be checked by the SB. Where the information is incorrect or insufficient then the SB will refer back to the MA requesting an appropriate application.

Once an appropriate application is received the SB must commission the required assessments via appropriately trained and experienced assessors. Where all the assessments agree then a deprivation of liberty must be authorised by the appropriate SB.

11 THE ROLE OF THE MCA Manager – As part of the Safeguarding Adults Unit.

The MCA manager has the responsibility for receiving the applications from MA’s and other relevant parties. The Manager will check the validity of the application to ensure they include the relevant essential information for the application to proceed (DoLS CoP chapter 3.8 and 3.9). If the information is not sufficient then the application will be referred back to the MA or relevant party requesting a new standard form to be completed. The 21 day time scale for completion of assessments for a standard authorisation will commence on receipt of the new application from the managing authority or relevant party. This information will then be recorded on the appropriate IT systems and databases and a file created by the MCA Manager and the MCA Business support officer. It is the responsibility of the MCA manager via the performance and information assistant to ensure that information regarding the minimum data set is recorded and appropriately forwarded to the relevant internal organizations for transmission onto the Department of Health.
Upon notification of an urgent authorisation or a standard application from an MA or other relevant party the MCA Manager or business support officer must acknowledge receipt of the application with the managing authority or relevant party.

The Manager will instruct an available BIA and MH assessor. They will ensure that the BIA has the relevant Enhanced CRB, experience and training to complete the assessment, as well as trying to ensure that there are no conflict issues. Referral Forms 28 and 29 can be completed by the MCA Manager, Assessors will be advised of each other’s contact details and the required timescales for submission of written reports.

Where it has been established that the relevant person does not have somebody to support them who is not engaged in providing care or treatment in a professional capacity or for remuneration a Manager will immediately instruct a DOLS IMCA and provide them with the contact details of the 2 Assessors.

The MCA Manager will also notify the team manager of the local area team of all relevant applications. This is to ensure that where the relevant person is within a care home, the area team are aware of the individual and can open the case and arrange for the situation to be reviewed appropriately. This will be particularly relevant where an application is unsuccessful and alternative care planning arrangement should be considered, or if a safeguarding issue is highlighted throughout the assessment process.
Copies of all completed assessments shared with standard circulation list (CoP 4.78)

Assessment ends prior to completing Best Interest Assessment

Either Assessor advises a manager and administrative staff that assessment has ended

Manager and BIA consider the need to use Safeguarding procedures and make a referral if appropriate

Manager and BIA consider if there are any care planning issues – Manager to support BIA to discuss these with appropriate Team Manager

BIA advises the Manager that all assessments are completed and of any recommendations made. All documentation forwarded to admin to collate attach blank forms 12 and 13

All six assessments completed successfully and recommendations made

Signature meeting

Authorisation

Granted

Form 12 Completed

Not Granted

Form 13 Completed

Manager organizes for the Signature within the given times scales. Manager and BIA to attend to discuss process and any recommendations

Authorisation Process Complete – Duration of Authorisation Communicated, Conditions Applied and RPR Appointed
13 THE ASSESSMENT PROCESS

As soon as the SB has confirmed that the request for a standard authorisation should be pursued, it must obtain the relevant assessments to ascertain whether the qualifying requirements of the DoLS are met. The SB has a legal responsibility to select assessors who are both suitable and eligible.

There must be a minimum of two assessors and the mental health and best interest assessors must be different people (DoLS CoP 4.13). The BIA can be an employee of the supervisory body or the managing authority, but they must not be involved in the care or treatment of the relevant person they are assessing nor in decisions about their care. The BIA should not be used if they are in a line management relationship with the professional proposing the deprivation of liberty or the mental health assessor. None of the assessors should have a financial interest in the case or be a relative of the person being assessed.

When the SB and MA are the same organisation the BIA cannot be their employee. The BIA should not be directly involved in the care provision of the relevant person. It is the responsibility of the South Tyneside’s DoL Team to instruct a BIA from another organisation to complete the required assessments. In such circumstances refer to Reciprocal Arrangements.

There are six assessments that are required to be completed. There is no set format to how the assessments should be completed, however it is expected that the Best Interest Assessment which is the most time consuming should not be commenced until there is a reasonable expectation that the other qualifying requirements are met.

The six assessments are as follows:

- Age - Form 5 to be completed
- Mental Capacity - Form 7 to be completed
- Mental Health - Form 6 to be completed
- Eligibility - Form 9 to be completed
- No Refusals - Form 8 to be completed
- Best Interests - Form 10 to be completed

(For more details about the assessments see Appendix 3 and Chapter 4 of the DoLS CoP).

IN South Tyneside the Best Interest Assessor will be responsible for completing the Age, No Refusals and Best Interest assessments. The Mental Health Assessor is expected to complete the Capacity, Mental Health and Eligibility assessments.
It will be the responsibility of the MCA manager to identify the appropriate Mental Health Assessor and inform the BIA of who this is. The BIA and Mental Health Assessor must then co-ordinate the assessments between them. However over all co-ordination of the process will be facilitated by the BIA. It is the responsibility of the BIA to establish at this point if a deprivation of liberty is occurring or is likely to occur within the next 28 days. If a deprivation of liberty is not occurring and is not likely to occur within the next 28 days then no further assessment at this time would be required.

In some instances it would be beneficial for the BIA to attend any ward reviews or planning meetings; where issues pertaining to deprivation of liberty have been highlighted and where further clarification is required by the care team.

It may be beneficial for the BIA and Mental Health Assessor to interview the Relevant Person together so to minimise any distress or confusion. However this will be considered on a case-by-case basis. Where joint assessments and interviews take place each assessor must make their own decisions and ensure an appropriate degree of objectivity is brought to the assessment process.

There is no reason in principle why interviews, examinations and fact-finding required as part of any deprivation of liberty safeguards assessment cannot serve more than one purpose in order to avoid unnecessary burdens on both the person being assessed and on staff. However the BIA must inform the relevant person and appropriate staff, family members, friends, carers or advocates supporting them of all purposes of the interview or examination (DoLS CoP 4.17).

The BIA must discuss with the MA, Relevant Person and other representatives the assessment process and what they can expect from it. The BIA can also at this point request access to information relevant to the assessment process. The BIA must as far as is possible and practical involve the Relevant Person in the assessment process to help them to participate in the decision-making.

The BIA should as far as is practical and possible seek the views of:

- Anyone the relevant person has previously named as someone they want to be consulted
- Anyone involved in caring for the person
- Anyone interested in the person’s welfare (for example, family, carers, other close relatives, or advocates)
- Any deputy representing the relevant person.

It is the responsibility of the BIA to identify if the relevant person has somebody engaged in providing care or treatment in a professional capacity or for remuneration to support him or her (DoLS CoP 3.22). If not then the BIA should refer back to the manager to instruct the Independent Mental Capacity Advocate (IMCA).
Within the assessment process the BIA will need to consider:
- Whether any harm to the person could arise if the deprivation of liberty does not take place?
- What harm that would be?
- How likely that harm is to arise, is the level of risk proportionate to the seriousness of depriving the relevant person of their liberty?
- What other care options have considered that are least restrictive?
- If the deprivation of liberty is unavoidable, what action could be taken to avoid it in the future?

The MCA Manager will be responsible for ensuring that the appropriate assessment from the Mental Health Assessor are returned and completed appropriately. The MCA Manager will then forward these assessments to the BIA who will then complete the Best Interest Assessment using Form 10 (where form 10 is used Form 5 need not be completed). Once all of the assessments are completed the BIA will forward them to the MCA Manager. Once received by the team they will the attach forms 12 and 13, the assessment documentation and co-ordinate an Authorisation meeting to which the Manager and BIA will take appropriate information.

If the BIA supports the deprivation of liberty they must state what the maximum duration of authorisation should be within the individual case, and this must not exceed 12 months. The BIA should:
- Set out the reasons for selecting the period stated and
- Take into account any available information of how likely it is that the relevant person’s circumstances will change, including the expected progression of illness and disability.
- The views of the Mental Health Assessor on how any DOL will affect the RP’s mental health

The BIA should consider the guiding principles of the MCA when considering the duration of any authorisation and that any authorisation is for the shortest time possible and least restrictive.

As soon as possible after carrying out of their assessments the assessors must give copies of their assessment reports to:
- The registered person for the managing authority
- The relevant person and their representative and
- Any IMCA involved.

It is suggested that the BIA shares their findings with the IMCA at the earliest opportunity but in practice it will be the team who circulate the assessments to other people on the standard distribution list.
14 CONDITIONS AND VARIATIONS

The BIA may recommend that conditions should be attached to the authorisation. For example, they may make recommendations around contact issues, issues relevant to the person’s culture or other major issues related to the deprivation of liberty, which if not dealt with would mean that the deprivation of liberty would not be in the relevant persons best interests.

The BIA may also make recommendations in order to work toward preventing a deprivation of liberty in the future. Any recommendations should only relate directly to the issue of deprivation of liberty.

The BIA should aim to impose the minimum necessary constraints, so that they do not unnecessarily prevent or inhibit the staff of the hospital or care home from responding appropriately to the person’s needs.

The BIA should discuss any proposed conditions with the relevant people involved in the assessment process before finalising their report. Within the report the BIA should be clear whether the rejection or variation of recommendations proposed by the BIA would significantly affect the other conclusions they have reached.

The supervisory body may attach conditions to the authorisation (5.5 of the DoLS Code of Practice),

Before deciding whether to give the authorisation subject to conditions, the delegated signatory must consider any recommendations made by the BIA.

Where the delegated signatory does not attach conditions recommended by the BIA they should discuss the matter with the BIA in case the rejection or variation of the conditions would significantly affect the other conclusions the BIA reached in their report.

15 EQUIVALENT ASSESSMENTS

In certain circumstances, for example at a Review Assessment it may not be necessary to carry out one or more of the six assessments required. The Act states that where an equivalent assessment to any of the assessments required for the purposes of deprivation of liberty has already been obtained, it may be relied upon instead of obtaining a fresh assessment.

An equivalent assessment is an assessment that:

• has been carried out in the preceding 12 months, not necessarily for the purpose of a deprivation of liberty authorisation
• meets all the requirements of the deprivation of liberty assessment (it is unlikely that all the requirements could be met for a Best Interest Assessment.
• And the supervisory body accepts and sees no reason why it should no longer be accurate.

SB’s should not be using equivalent assessments on a routine basis. Where an equivalent assessment is being used the SB should record their reasons and complete Standard Form 11 and attach the equivalent assessment to the form. BIA’s should discuss the use of any equivalent assessments with a manager. Where the required assessment is an age assessment, there is no time limit on the use of equivalent assessment.

16 EXTENSION OF URGENT AUTHORISATION

Where the managing authority has granted itself an urgent authorisation it can approach the supervisory body requesting an extension for a further seven days. Managing authorities should complete Form 2 and forward this to the MCA manager.

The supervisory body may only extend an urgent authorisation if it appears to them that:
• the managing authority have requested a standard authorisation; and
• there are exceptional reasons why it has not yet been possible for that request to be disposed of, and
• it is essential for the existing detention to continue until the request is disposed of.

Extensions can only be granted for exceptional reasons. It is for the supervisory body to decide what constitutes an ‘exceptional reason’, but because of the seriousness of the issues involved the supervisory body’s decision must be soundly based and defensible. Urgent authorisations can only be extended once. The outcome decision should be recorded using Form 3 by the Lead manager.

17 AUTHORISATION BY THE SUPERVISORY BODY

Where possible the BIA and a Manager should attend the Authorisation Meeting as this will provide an opportunity for the Authorised Signatory to ask any questions pertaining to the case and assessment process and especially help to consider the impact of any variation to proposed conditions.

The authorisation of deprivation of liberty must also take place within the 7 or 21 day timescales set out for urgent and standard authorisations.
If all the assessment in the standard authorisation assessment process indicates that the relevant person meets all the qualifying requirements, then the supervisory body must give a deprivation of liberty authorisation. The manager will complete Form 12 for the delegated officer to sign.

The supervisory body must set the period of the authorisation, which may not be longer than that recommended by the BIA. A copy of the authorisation should be given to the Manager who will then forward copies of this and all assessments to:

- The Relevant Person
- The managing authority
- The Relevant Person’s representative
- Any IMCA involved in the case
- Any other person named in the BIA’s report.
- The Care Manager

The MCA Manager will retain a file and input info onto relevant IT systems.

18 UNSUCCESSFUL APPLICATIONS

Requests for authorisation may not be successful for a number of different reasons. Unauthorised deprivations of liberty are unlawful and it is the responsibility of the managing authority to ensure that where a request for authorisation is unsuccessful they no longer deprive the relevant person of their liberty. Eg This will apply if the BIA feels there is a Deprivation occurring but it is not in the RP’s best interests

Where any one of the six assessments fails then no authorisation can be granted. The BIA should liaise with the DOL Manager to outline the assessment outcomes.

Form 13 should be completed by the manager for signature by the SB. The MCA Manager or business support will then circulate this and copies of any completed assessments to all the people involved in the assessment process. Assessors should be informed that they are not required to complete any outstanding assessments.

In circumstances where the BIA does not feel that the proposed deprivation of liberty is in the best interests of the relevant person. The BIA must liaise with the Manager outlining the outcome of the assessment. The Manager will support the BIA to discuss the case with the relevant team manager and request a review of the case to take place immediately. Where the relevant person privately funds their placement a worker from the local authority should be appointed to support them in reviewing their care arrangements.
The steps taken to end the deprivation of liberty should be recorded in the care plan. As soon after making a decision **not** to grant an authorisation the Authorised Signatory must give a copy of the decision to:

- The relevant person
- The managing authority
- The Relevant persons representative
- Any independent IMCA involved in the case
- Any other person named in the BIA’s report.

It is the responsibility of the registered person of the managing authority to comply with the law if the request for authorisation is unsuccessful and they will need to keep the person’s care under review to ensure that unlawful deprivation of liberty does not arise in the future.

Should the supervisory body continue to have concerns around this matter it should inform the Care Manager and alert:

Care Quality Commission


### 19 SAFEGUARDING

If during or following the assessment process there any concerns around poor practice, abuse related to the relevant person or other individuals within the establishment or concerns around institutional abuse the BIA must liaise with the Local Safeguarding Adults Unit.

### 20 IDENTIFICATION AND APPOINTMENT OF THE RELEVANT PERSON’S REPRESENTATIVE (RPR)

The RPR is a new role within the capacity legislation and is seen as ‘crucial’ in the deprivation of liberty process. The RPR is defined by the DoLs code of practice as ‘a person independent of the relevant hospital or care home, appointed to maintain contact with the relevant person, and to represent and support the relevant person in all matters relating to the operation of the deprivation of liberty’ (p118 of the DoLs Code of Practice). In essence the role provides representation and support that is independent of the commissioners and providers of services (7.2 Code of Practice).

Once a request for authorisation has been made and accepted the allocated BIA must begin to identify an appropriate person to act as the Relevant Persons
Representative. (Meanwhile the SB will have appointed a DOLS IMCA.) The BIA should follow the guidance within the DoLS CoP Chapter 7.

21 WHAT IS THE ROLE OF RPR?

The RPR must maintain contact with the relevant person. They must also represent and support the relevant person in all matters relating to the deprivation of liberty safeguards including:

- Triggering a review
- Using the organizations complaints procedure on the relevant persons behalf
- Make an application to the Court of Protection

The RPR must work within the five principles of the Capacity Act and in the relevant persons best interests.

It must also be noted that the RPR DOES NOT have to agree with the DOL authorisation being made.

22 IDENTIFYING THE RPR

The best interest assessor must determine whether the relevant person has capacity to select a representative (Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person’s Representative) Regulations 2008). Where there is no identifiable or eligible representative the supervisory body may select a person to be a representative if they are not employed by the supervisory body (Amended RPR Regulations (2008) (7.2)) who:

- Would perform the role in a professional capacity
- Has satisfactory skills and experience to perform the role
- Is not a family member, friend or carer of the relevant person
- Is not employed to work in the relevant person’s managing authority where the relevant person’s managing authority is a hospital and
- Is not otherwise employed to work for the supervisory body.

When identifying / selecting a suitable RPR the best interest assessor or supervisory body should pay particular attention to the communication and cultural needs of the relevant person. The BIA should complete Form 24 identifying the potential RPR.

In circumstances where there is no person able to act as the RPR or willing to take on the role of RPR the SB must instruct a ‘Paid RPR’ from the local IMCA.
provider. If this is the case the ‘paid RPR’ should have full CRB clearance before commencing the role.

23 ELIGIBILITY TO BE A RPR

It is the responsibility of the Best Interest Assessor to confirm where any representative proposed by the relevant person, a donee or a deputy is eligible using the criteria below;

- 18 years of age or over
- Able to keep contact with the relevant person
- Not prevented by ill-health from carrying out the role of the representative
- Is willing to be appointed

The person must not be:

- Financially interested in the relevant person’s managing authority
- A close relative of a person who has financial interest in the relevant person’s managing authority
- Employed by or providing services to the care home in which the relevant person is residing
- Employed by the hospital in a role that is or could be related to the care or treatment of the relevant person or
- Employed to work in the relevant person’s supervisory body in a role that is or could be, related to the relevant person’s case.

This role does not affect the appointment of a donee or deputy, they may in fact be appointed as RPR if they meet the eligibility criteria. Indeed, where the relevant person lacks capacity the donee or deputy, if they have the appropriate authority they can recommend an RPR subject to the criteria above. If this is the case then the Best Interest Assessor must recommend that person to the supervisory body. There is no presumption that the relevant person should be the same person identified as the nearest relative for the purposes of the Mental Health Act (1983).

24 APPOINTMENT OF THE RPR

Once the assessments are completed and indicate that a standard deprivation of liberty authorisation is required and it is in the best interests of the relevant person, the relevant supervisory body must appoint a RPR as soon as is
practicable to represent the person who has been deprived of their liberty (paragraph 139 of Schedule A1).

The RPR must be invited in writing by the supervisory body and this should be completed by the Manager and signed by the delegated officer. If RPR is willing to undertake this role then the supervisory body may formally appoint them. The appointment must also be in writing and should set out the role and responsibilities of the RPR (Form 25 should be completed and guidance information given from the link below: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_089772). The letter should state the name of the appointed person and the date of expiry of the appointment, which must be for the period of the standard authorisation. This letter must be copied to:

- The appointed person
- The relevant person
- Any donee or deputy of the relevant person
- Any IMCA involved
- Any interested party named by the best interest assessor
- The managing authority

The RPR must confirm in writing to the supervisory body that they accept the appointment and understand the role and responsibilities in respect of the RPR.

25 SUPPORT AND MONITORING

Managing authorities and supervisory bodies should inform the RPR about sources of support and information available to help them in their role. The supervisory body should inform the RPR of their statutory right to IMCA should they require support to carry out the functions of the role. If the RPR is unable to maintain sufficient contact with the relevant person the managing authority will need to consider informing the supervisory body. This should be monitored as part of the review process. Good record keeping is essential to this process.

26 RESPONSIBILITIES OF MANAGING AUTHORITIES

Managing authorities must ensure that the relevant person and their representative understand:

- The effect of the authorisation
• Their right to request a review (Chapter 8 of the DoLs CoP)
• Formal and informal complaints procedure
• Right to make an application to the Court of Protection to seek a variation or
• Termination of the authorisation
• Their right, where the relevant person does not have a paid professional representative, to request the support of an IMCA (Chapter 7 of the CoP).
• The MA must also monitor that the RPR carries out their function appropriately. Pro rata dedicate 26 hours per 12 months of an Authorisation.

27 INFORMAL RPR’S AND THE EXTENDED ROLE OF THE IMCA

A person being deprived of their liberty will be a particularly vulnerable position during any gaps in the appointment of a relevant person’s representative, since there is no one to represent their interests or to apply for a review on their behalf. In these circumstances if there is nobody who can support and represent the person (other than a person engaged in providing care and treatment for the relevant person in a professional capacity or for remuneration), the supervisory body must appoint an IMCA to represent the relevant person until the appointment of the RRP. Once a RPR is appointed the IMCA role is terminated.

Both the relevant person subject to a standard authorisation and an unpaid RPR has a statutory right of access to an IMCA. It is the responsibility of the supervisory body to instruct an IMCA if requested by the relevant person or their representative. The intention is to provide extra support to the relevant person or a family member or friend acting as their representative if they need it, or to make use of the review or court of protection safeguards.

If the person has a paid ‘professional’ RPR there is no requirement for an IMCA to be provided.

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

If the supervisory body has reason to believe that the review of the DoLS safeguards might not be used without the support of an IMCA then they must instruct an IMCA. This work will be coordinated by a Manager.
The circumstances in which a person may cease to be a representative are set out in regulation 13 of the Relevant Person’s Representative Regulations. The appointment of the RPR can be terminated in any of the following circumstances:

- Standard authorisation comes to an end
- If the relevant person with capacity objects to the RPR and a different person is selected
- If the donee or deputy with appropriate authority and the relevant person lacks capacity objects to the representative continuing and another representative is selected instead.
- The supervisory body becomes aware that the representative is no longer willing or eligible.
- The supervisory body becomes aware the RPR is not fulfilling their responsibilities.
- The RPR dies.

The managing authority should in the first instance attempt to resolve any issues locally with the RPR, However if these attempts are unsuccessful then they should refer back to the MCA manager to consider the review of the appointment. The Manager having discussed the circumstances with the relevant people should complete Form 26 and refer to the BIA to further investigate the issues.

If termination is agreed then the BIA should refer back to the Manager who will complete Form 27. If the BIA has been unable to identify an appropriate RPR then the Manager must instruct an IMCA to act as RPR until the appointment of appropriate RPR.
Where an appropriate RPR is identified then the BIA should complete Form 24 and the process of appointment should be followed.

29 REQUESTS FROM A 3RD PARTY FOR DOLS AUTHORISATION

The safeguards include procedures for responding to situations where an individual believes that someone in a care home or hospital is being deprived of their liberty without proper authorisation. If an individual believes that someone is being deprived of their liberty without proper authority, the Act allows for them to ask the managing authority to request a standard authorisation. The DoLS Standard Letter 1 should be completed and forwarded to the relevant managing authority.

If the managing authority does not then request a standard authorisation ‘within a reasonable period’ the individual may ask the supervisory body to decide whether or not there is an unauthorised deprivation of liberty. The individual may do this using the DoLS Standard Letter 2.

These should be forwarded to the MCA Manager who will record the request using Form 16. The referral will be forwarded to an appropriate BIA who will complete Form 17. The BIA’s report will be forwarded to the MCA Manager where the Manager will record the decision using Form 18. If it is felt that the request is not frivolous or vexatious or the issue of whether or not there has been an unauthorised deprivation of liberty has already been considered by the supervisory body with no subsequent change in the relevant person’s circumstances, then an assessment will be required. At this point the manager must appoint an IMCA. A copy of the BIA report will be forwarded to the 3rd Party referrer, the managing authority and any IMCA involved or instructed.

The Manager will consider and with the BIA refer any safeguarding issues or concerns relevant to the Safeguarding Team or Care Quality Commission (CQC). If a deprivation of liberty is taking a place the referral will progress to full assessment. The managing authority will complete Form 1 or Form 4 and forward these to the MCA manager and the assessment process will begin.
Annex four of the DoLs Code of Practice sets out the Standard Authorisation Process which is the responsibility of the supervisory body. Responsibility for requesting a review rests with the managing authority, it advisable that the managing authority contacts the supervisory body at least one month prior to the end of the existing authorisation for a reassessment process. The managing authority, relevant person, or their representative can request a review of the authorisation where they feel that the relevant person’s circumstances have
changed and where any of the requirements of the DoLS authorisation are no longer present. Chapter 8 of the Code outlines this process and also sets out the statutory grounds for review.

The grounds for requesting a review are:

- The relevant person’s circumstances have changed from those which formed the basis of the original application
- The person is ineligible because they now object to receiving mental health treatment in hospital
- There has been a change in the relevant person’s situation and because of the change, it would be appropriate to vary the authorisation.

If a care home or hospital identified that deprivation of liberty is no longer necessary then they must end it immediately, by adjustment of the care regime or whatever change is appropriate. They should then apply to the supervisory body to discharge the authorisation.

The supervisory body must carry out a review if one is requested by the relevant person, their representative or by the managing authority. The following forms should be used:

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

The supervisory body may also decide to call a review without a request being made. If this is the case the Manager should complete Form 20.

A person may only be deprived of their liberty under the Mental Capacity Act 2005 if they meet all of the six qualifying requirements. In essence, what the supervisory body must decide is whether it has evidence that the person may no longer meet the criteria for being deprived of their liberty under the Mental Capacity Act 2005.

In general terms, a review should be carried out if it is possible that the person no longer meets one or more qualifying requirements. With one exception, the supervisory body must arrange for fresh assessments to be carried out for each qualifying requirement that appears to be reviewable. The exception is where it has been decided that the best interests requirement is reviewable on the sole ground that there has been a change in the person’s case as a result of which the conditions of the standard authorisation need varying.

Once the above letters and forms have been received by the manager will complete Form 20 giving interested parties notice that a review is to be carried
out. Based on the information received the Manager will then complete Form 21, which records the decision as to whether any qualifying requirements are reviewable.

Where the supervisory body arranges fresh assessments relating to one or more of the qualifying requirements, these assessments are called ‘review assessments’. However, they are recorded using the same forms that are used to assess a person following a request for a new standard authorisation:

<table>
<thead>
<tr>
<th>Form</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Form 5</td>
<td>Age assessment form for completion by assessor</td>
</tr>
<tr>
<td>Form 6</td>
<td>Mental health assessment form for completion by assessor</td>
</tr>
<tr>
<td>Form 7</td>
<td>Mental capacity assessment form for completion by assessor</td>
</tr>
<tr>
<td>Form 8</td>
<td>No refusals assessment form for completion by assessor</td>
</tr>
<tr>
<td>Form 9</td>
<td>Eligibility assessment form for completion by assessor</td>
</tr>
<tr>
<td>Form 10</td>
<td>Best interests assessment form for completion by assessor</td>
</tr>
</tbody>
</table>

At this stage the manager will refer to an appropriate BIA and / or Mental Health Assessor to complete the relevant review assessments.

Once these assessments have been completed the manager will arrange a meeting with the delegated signatory and complete Form 22, recording its decision following receipt of the review assessments.

If the authorisation ends, then Form 23 is completed which gives notice that a standard authorisation has ceased. Information is then circulated to the relevant people involved in the review assessment.

The manager will complete Forms 26 and 27 to terminate the RPR appointment.

Standard authorisation will cease to be in force for a number of reasons including:

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

Once the standard authorisation comes to an end the managing authority cannot lawfully continue to deprive the person of their liberty. If they require a further authorisation they should follow the procedure for a standard authorisation request.

31 SUSPENSION OF A STANDARD AUTHORISATION

Separate review processes are required for those cases in which the eligibility requirements for authorisation cease to be met for a short period of time for reasons other than the person is refusing mental health treatment in hospital. Chapter 8 of the DoLS Code of Practice deals with these occasions.
Where a resident is subject both to a standard authorisation under the Mental Capacity Act 2005 and a Mental Health Act 1983 order that may conflict with it in some way, the law provides that Mental Health Act 1983 powers generally take priority over Mental Capacity Act 2005 powers.

For example, where a person who is subject to a standard authorisation and is later detained under the Mental Health Act 1983, the law provides that the standard authorisation must be suspended. This prevents the person from being subject to two competing detaining orders.

Similarly, a standard authorisation must be suspended if the person is subject to a community treatment order or to guardianship under the Mental Health Act 1983 and the requirements imposed on them under their Mental Health Act 1983 order conflict with the terms of the standard authorisation.

Form 14 includes a full list of the circumstances in which a standard authorisation will need to be suspended because it conflicts with a Mental Health Act 1983 regime: see Parts C and D of the form.

It is the responsibility of the managing authority to inform MCA Manager that a suspension of a standard authorisation is required, by completing **Form 14**.

**Form 14** is completed by the managing authority to notify the supervisory body that a standard authorisation should be suspended because the eligibility requirement is no longer being met.

The effect of Form 14 is that the existing standard authorisation no longer authorises the care home or hospital to deprive the person of their liberty.

What happens next depends on whether or not the person again becomes eligible to be deprived of their liberty under the Mental Capacity Act 2005 within the following 28 days.

If the relevant person becomes eligible for authorisation again within 28 days, the managing authority should complete **Form 15** informing the MCA Manager.

If 28 days elapse then the MCA Manager will write to:

- Relevant person
- Managing authority
- Relevant Person's Representative
• IMCA

Informing them that 28 days have elapsed and the date that the authorisation was ended.

**Form 23** is completed the delegated signatory terminating the authorisation.


The deprivation of liberty safeguards provide legal protection for those vulnerable people who are, or may become deprived of their liberty within the meaning of Article 5 of the ECHR in a hospital or care home. They do not apply to people detained under the MHA.

Both pieces of legislation encourage practitioners to practice in a way that is 'least restrictive'. In both the MCA Code of Practice and the Mental Health Amendments Code of Practice there is now a duty to consider whether their aims could be met ‘safely and effectively’ by the MCA before they consider detaining under the Mental Health Act. In the event of detaining an individual under the MHA practitioners must demonstrate why the MCA was felt not to be appropriate.

It is the concept of the 'least restrictive' intervention that would encourage practitioners to consider the MCA over the MHA. However within the DoLS Code of Practice it is clear that where people object to medical treatment for mental disorder **and** meet the criteria of the MHA then the DoLS cannot be used.

There are a number of 'interface' issues that should to be considered by assessors under the DoLS. Chapter four of the DoLS Code of Practice addresses some of the interface issues.

### 33 ELIGIBILITY ASSESSMENT

This assessment relates specifically to the relevant person’s status, or potential status under the MHA. A person is not eligible for a deprivation of liberty authorisation if:

- They are detained as a hospital in-patient under the MHA or
- The authorisation, if given would be inconsistent with an obligation placed on them under the MHA. This will only affect people who are on section 17 leave under the MHA or who are subject to guardianship, supervised community treatment or conditional discharge.
In such circumstances the BIA who is also an Approved Mental Health Professional (AMHP) or an AMHP or Section 12 Mental Health Assessor completing the assessment much check the mental health status of the relevant person.

Where the proposed authorisation relates to a care home or to deprivation of liberty in a hospital for **non-mental health treatment**, the assessors should check that the authorisation would not be inconsistent with an obligation placed on the person under the MHA.

On occasion a person may already be subject to guardianship and who also lacks capacity to make the relevant decision may need specific care or treatment in a care home or hospital that cannot be delivered without a deprivation of liberty. The process for obtaining a deprivation of liberty authorisation and the criteria to be applied are the same as for any other person.

If the proposed authorisation relates to deprivation of liberty in a hospital wholly or partly for the purpose of treatment for mental disorder, then the relevant person will not be eligible if:

- They object to being admitted to hospital, or to some or all the treatment they will receive there for mental disorder **and**
- They meet the criteria for an application for admission under section 2 or section 3 of the MHA (unless an attorney or deputy action within their powers had consented to the things to which the person is objecting).

However people on section 17 leave from detention under the MHA or subject to supervised community treatment or conditional discharge are, however, eligible for the deprivation of liberty safeguards if they require treatment in hospital for a physical disorder.

### 34 SHORT TERM SUSPENSION OF AUTHORISATION

A review of the authorisation can be called if the relevant person no longer meets the eligibility requirement because they now object to receiving mental health treatment in hospital and they meet the criteria for an application for admission under section 2 or section 3 of the MHA. If this is the case a review should be started immediately, to prevent the person being subject to two competing detaining orders.
Deprivation of Liberty Safeguards
Application Process to South Tyneside Council

Managing Authority believes a DoL may be taking place (Refer to annex 2 (CoP))

Managing Authority completes a Mental Capacity Assessment and Making a Best Interest Decision Form, MCA1 and 2

Does the relevant person lack capacity to consent to care or treatment and is this in the persons best interests?

Application received by the DoL and checked over by a MCA Lead Manager.

Is the application valid and appropriate?

Are the forms fully completed?

Has supporting information been forwarded?

Deprivation present - application to be sent to MCA Manager at Safeguarding Adults Unit (Form 1 – Urgent, Form 2 – Standard). Both forms sent to DoL team in South Tyneside Fax for Urgent Applications, Registered Mail for Standard Applications

If the application is not valid and complete refer back to MA and restart application process on receipt of revised application

If the application not appropriate follow Annex 3 – CoP Lead Co-ordinator to discuss with MA and request any additional information to inform decision.

Notice of extension required to an urgent authorisation from the MA (CoP 6.24)

Co-ordinator reviews the request and informs BIA and MA of their decision (Form 3)

Application appropriate

If application is valid and appropriate lead co-ordinator passes the application to Mental Health Assessor and a suitable BIA ensuring independence and objectivity.

BIA informed of the timescales the six assessments should be completed within and the details of the Mental Health Assessor and any IMCA involvement.

BIA advises the referrer of plan of action and those people involved in the process and assessments

Assessment Process

Allocated BIA confirms who and when each of the assessments will be undertaken.

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

BIA considers the use of equivalent assessments (CoP 4.8) If BIA completes Form10 they do not need to complete Form 5. If equivalent assessment used complete Form 11 and previous attach assessment

BIA arranges access to relevant information (CoP 4.77)

Relevant Person Representative

Does the relevant person have capacity to choose an eligible RPR? (CoP 7.12)

If not SB must instruct a section 39ACD IMCA

If none then ensure a RPR is appointed and

Does the person have somebody not engaged in providing care or treatment in a professional capacity or for remuneration to support him or her? (CoP 3.22)

Application Appropriate

If application is valid and appropriate lead co-ordinator passes the application to Mental Health Assessor and a suitable BIA ensuring independence and objectivity.

BIA informed of the timescales the six assessments should be completed within and the details of the Mental Health Assessor and any IMCA involvement.

BIA advises the referrer of plan of action and those people involved in the process and assessments

Authorisation and / or Decision Making Process

NFA
### Deprivation of Liberty Safeguards Assessment: Sequence; Eligible Assessor and Purpose

<table>
<thead>
<tr>
<th>Regulation</th>
<th>Assessment domains and sequence</th>
<th>Medical Assessor</th>
<th>Non Medical assessor</th>
<th>What the regulation says</th>
<th>What the code of practice says</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulation 1</td>
<td>Age assessment</td>
<td>No</td>
<td>YES</td>
<td>“A person is eligible to carry out an age assessment if that person is eligible to carry out a best interests assessment”</td>
<td>“The purpose of the age assessment is simply to confirm whether the relevant person is aged 18 or over”</td>
</tr>
<tr>
<td>Regulation 2</td>
<td>No refusals assessment</td>
<td>No</td>
<td>YES</td>
<td>“A person is eligible to carry out a no refusals assessment if that person is eligible to carry out a best interests assessment”</td>
<td>“The purpose of the no refusals assessment is to establish whether an authorisation to deprive the relevant person of their liberty would conflict with other existing authority for decision making for that person”.</td>
</tr>
<tr>
<td>Regulation 3</td>
<td>Mental Capacity assessment</td>
<td>YES</td>
<td>YES</td>
<td>OR</td>
<td>“A person is eligible to carry out a mental capacity assessment if that person is eligible to carry out a mental health assessment or (b) a best interests assessment.”</td>
</tr>
<tr>
<td>Regulation 4</td>
<td>Mental Health Assessment</td>
<td>YES</td>
<td>No</td>
<td>“A person is eligible to carry out a mental health assessment (a) approved under section 12 of the Mental Health Act 1983; or a registered medical practitioner”</td>
<td>“The purpose of mental health assessment is to establish whether the relevant person has a mental disorder within the meaning of the Mental Health Act 1983. That means any disorder or disability of mind, apart from dependence on alcohol or drugs. It includes all learning disabilities. This is not an assessment to determine whether the person require mental health treatment”</td>
</tr>
<tr>
<td>Regulation 5</td>
<td>Eligibility Assessment</td>
<td>YES (must be s12)</td>
<td>YES (must be AMHP)</td>
<td>OR</td>
<td>“A person is eligible to carry out an eligibility assessment if that person is (a) approved under section 12 of the Mental Health Act 1983; or an approved mental health professional who is also an approved mental health practitioner”</td>
</tr>
<tr>
<td>Regulation 6</td>
<td>Best Interests assessment</td>
<td>NO</td>
<td>YES</td>
<td>“A person is eligible to carry out a best interests assessment if they are one of the following:”</td>
<td>“The purpose of the best interests assessment is to establish, firstly whether a deprivation of liberty is occurring or going to occur and, if so, whether - it is in the best interests of the relevant person to be deprived of liberty - it is necessary for them to be deprived of their liberty to prevent harm to themselves, and - deprivation of liberty is a proportionate response to the likelihood of the relevant person suffering harm and the seriousness of that harm. In both England and Wales, the best interests assessment must be undertaken by an AMHP, social worker, nurse, occupational therapist or chartered psychologist”</td>
</tr>
</tbody>
</table>