NHS
Mersey Care
NHS Foundation Trust

Community and Mental Health Services

TRUST-WIDE CLINICAL POLICY DOCUMENT

Management of the Deprivation Of Liberty Safeguards (DOLS) within the Meaning of the Mental Capacity Act 2005

Policy Number:	**MC04**
Scope of this Document:	**All clinical and administrative staff who work within the framework of the mental capacity and/ or Mental Health Acts**
Recommending Committee:	**Patient Safety Commitee**
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Lead Executive Director:	**Medical Director**
Lead Author(s):	**Mental Capacity Act Coordinator**

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2020-Version 6

Striving for perfect care and a just culture

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Further information about this document:

Document name	**MC04**
Document summary	**This policy and procedure was introduced in 2007. It was subsequently reviewed in 2009,2014, 2016 and 2017. This is a further review of that policy and procedure. The purpose of this corporate policy and procedure is to provide support and guidance for those working within the framework of the Mental Capacity Act 2005**
Author(s) Contact(s) for further information about this document	**Yvette Reader** **Mental Capacity Act Coordinator** **Telephone: 0151 527 3436** **Email: yvette.reader@merseycare.nhs.uk**
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To be read in conjunction with	**Deprivation Of Liberty Safeguards Code of Practice (2008 ed)** **Mental Capacity Act Code of Practice (2007 ed)** **Mental Health Act Code of Practice (chapter 13, 2015 ed)** **Trust Policies.** **MC01- Over-arching Policy and Procedure of the Mental Capacity Act (MCA) 2005** **MH01-Overarching Mental Health Act policy, SD17-Safeguarding vulnerable adults from abuse, SD19-Advance statements and advance decisions, Transforming Care-Service Mode (ADASS 2015), Transforming Care-Next Steps (NHS England 2015), Transforming Care-Building the Right Support (ADASS 2015)**

This document can be made available in a range of alternative formats including various languages, large print and braille etc

Version Control:

		Version History:
Version 1	Corporate Document Review Group	July 2010
Version 2	Corporate Document Review Group	2013
Version 3	Corporate Document Review Group	30.04.2016
Version 4	Executive Lead Approval	February 2017
Version 5	Acquisition Steering Group	May 2017
Version 6	Medical Director	April 2020

SUPPORTING STATEMENTS

this document should be read in conjunction with the following statements:

SAFEGUARDING IS EVERYBODY'S BUSINESS

All Mersey Care NHS Foundation Trust employees have a statutory duty to safeguard and promote the welfare of children and adults, including:

- being alert to the possibility of child / adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child / adult;
- knowing how to deal with a disclosure or allegation of child /adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child / adult concern;
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the trust's safeguarding team;
- participating in multi-agency working to safeguard the child or adult (if appropriate to your role);
- ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Mersey Care NHS Foundation Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session

EQUALITY AND HUMAN RIGHTS

Mersey Care NHS Foundation Trust recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the *protected characteristics* of age, disability, sex, race, religion and belief (or lack thereof), sexual orientation, gender reassignment, pregnancy and maternity and marital and civil partnership status. The Equality Act also requires regard to socio-economic factors.

The trust is committed to promoting and advancing equality and removing and reducing discrimination and harassment and fostering good relations between people that hold a protected characteristic and those that do not both in the provision of services and in our role as a major employer. The trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Mersey Care NHS Foundation Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Mersey Care NHS Foundation Trust is committed to carrying out its functions and service delivery in line the with a Human Rights based approach and the FREDA principles of **F**airness, **R**espect, **E**quality **D**ignity, and **A**utonomy**D**ignity, and **A**utonomy

Contents

1. PURPOSE AND RATIONALE

1.1 Introduction

1.1.1 This policy and procedure was introduced in 2011.

1.1.2 The Trust's Hospital Managers have a statutory duty to ensure that all relevant functions of the Deprivation of Liberty Safeguards – DoLS (within the meaning of the Mental Capacity Act 2005) are applied and monitored according to given standards.

1.1.3 Similarly, all personnel working within the framework of the Deprivation of Liberty Safeguards and the Mental Capacity Act have a statutory duty to apply its overarching key principles and pay due regard to their respective Codes of Practice.

1.1.4 The Mental Capacity Act 2005 operates at two levels: those where a *restriction of liberty* may be applied and those where a *deprivation of liberty* may be applied. This policy and procedure primarily addresses its management and safeguards of circumstances involving a *deprivation of liberty*. A separate policy (ref. MC01) considers the management and safeguards of circumstances involving a *restriction of liberty.* Where appropriate the two policies interlink with each other.

1.1.5 The purpose of this corporate policy and procedure is to provide support and guidance for those working within the framework of the Deprivation of Liberty Safeguards (including how it interacts with both the Mental Capacity Act 2005 as a whole and the Mental Health Act 1983.

2 OUTCOME FOCUSED AIMS AND OBJECTIVES

The aims of this policy and procedure are to describe the standards expected and the supporting processes for:

(a) The clinical and administrative application of the Deprivation of Liberty Safeguards;

(b) Describing the interface processes that exist between the Mental Health Act 1983, the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards;

(c) The monitoring of the clinical and administrative application of the Deprivation of Liberty Safeguards;

(d) Supporting those applying or monitoring the Deprivation of Liberty Safeguards;

(e) Review and monitoring of the above process.

1.2 Whom This Policy and Procedure is Applicable to

This policy and procedure is applicable in part and/or whole to:

(a) all Mersey Care NHS Foundation Trust staff who work with or on behalf of service users receiving assessment care and/or treatment within the organisation;

(b) the Trust's Mental Health Act Managers (Hospital Managers);

(c) the Trust's Mental Health Law Administrators;

(d) the Trust's Legal Team.

1.4 Reasons for Reviewing this Policy and Procedure

1.4.1 Since the last review the Mental Capacity (amendment) Act received royal assent on 16th May 2019. Guidance is to be given within the code of practice to the Liberty Protection safeguards (which will replace DOLS) which at the time of this review is yet to be drafted.

1.4.2 Consequently, whilst the fundamental content of previous policies remain unchanged there has been subsequent interpretation (through, for example case law rulings) of how certain aspects of the Deprivation of Liberty Safeguards should be applied. These interpretations are included in this version to ensure compliance.

1.4.3 Background history on the developing case law has been removed as it is no longer considered necessary. Guidance driven by case law (or any other source) is accordingly cross-referenced.

1.4.4 In previous versions the statutory documentation was included within the appendices. These have now been removed as they only duplicate what is available on the Trust website and within each Division. All reference to statutory documentation will include guidance on how to access them.

1.5 Essential Associated Reading

1.5.1 This policy and procedure must be read in conjunction with:

(a) The Deprivation of Liberty Safeguards Code of Practice (*Office of the Public Guardian*; 2008 edition);

(b) The Mental Capacity Act 2005 Code of Practice (*Office of the Public Guardian*; 2007 edition);

(c) The Code of Practice Mental Health Act 1983 (*Department of Health,* 2015 edition);

(d) Trust Policy MC01: Mental Capacity Act Policy and Procedure for Staff;

(e) Trust Policy MH01: Overarching Policy and Procedure of the Mental Health Act 1983;

(f) Trust Policy Ref: SD17 Safeguarding vulnerable adults from abuse;

(g) Trust Policy Ref: SD19 Advance statements and advance decisions;

(h) Human Rights Act 1998 (and the European Convention of Human Rights, 1953)

1.5.2 Recommended supplementary reading:-

None. (But emerging case law informs practitioners on determining when and how the Deprivation of Liberty Safeguards should be applied. Therefore, when considering the management of persons who lack capacity in the hospital in-patient setting, practitioners should check with the Trust's legal team to determine if there have been any such case law developments).

2 OUTCOME FOCUSED AIMS AND OBJECTIVES

2.1 People's human rights will be upheld.

2.2 A clear process for any deprivation of liberty to be authorised using a procedure prescribed in law will be followed.

2.3 Staff undertake and can demonstrate their statutory obligations to protect people's right to liberty (or its lawful authorisation if deprived of the same).

3 SCOPE

This corporate policy and procedure applies in part and/or whole to:

3.1 all Mersey Care NHS Trust staff who work with or on behalf of service users receiving assessment care and/or treatment within the organisation;

3.2 the Trust's Mental Health Act Managers (Hospital Managers);

3.3 the Trust's Mental Health Law Administrators;

3.4 the Trust's Legal Team.

4 DEFINITIONS

4.1 Deprivation of Liberty (General Guidance)

Deprivation of Liberty is defined under Article 5 of the *European Convention on Human Rights:*

"Everyone has the right to liberty and security of person. No-one shall be deprived of his liberty ..." (Article 5(1))

Lawful arrest (e.g. criminal prosecution), lawful detention for mental disorder (e.g. under the Mental Health Act 1983), the lawful detention of a person to prevent the spread of a notifiable, communicable disease and the lawful arrest/detention of illegal immigrants are clear examples of cases where a person may be deprived of their liberty without there being any breach of Article 5.

Less clear are examples where a person lacks the mental capacity to make a decision in respect of in-patient care and treatment for mental disorder but is compliant when taken to a hospital and/or a care home and, does not object to being there or receiving care/treatment there. Article 5 is not specific here and it is generally recognised that there is no clear definition determining what does and does not constitute deprivation of liberty in these circumstances. In short:

"The question of whether the steps taken by staff or institutions in relation to a person amount to a deprivation of that person's liberty is ultimately a legal question, and only the courts can determine the law." (*Deprivation of Liberty Safeguards Code of Practice*, 2008 ed, Ch.2, p.16).

4.2 **Deprivation of Liberty (Current Definition)**

A Deprivation of Liberty occurs where:

(a) a person is subject to the continuous supervision AND control; AND…

(b) that person is not free to leave the environment where the continuous supervision and control is being applied; AND…

(c) that person either will not or cannot give their informed consent to the three elements of continuous supervision, continuous control and not being free to leave (as described above).

(d) The law commission defines 'free to leave' as being free to be accommodated elsewhere without interference by a public body.

4.3 **Deprivation of Liberty Safeguards (DoLS)**

"The deprivation of liberty safeguards (DoLS) provides 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, whether placed under public or private arrangements. They do not apply to people detained under the Mental Health Act 1983. The safeguards exist to provide a proper legal process and suitable protection in those circumstances where deprivation of liberty appears to be unavoidable, in a person's own best interests." (ibid, Ch.1, para. 1.1, p.9)

NB: An exception occurs where a person detained under the Mental Health Act 1983 requires additional interventions that amount to deprivation but are not authorised by the Mental Health Act 1983 (e.g. treatment of a physical disorder unrelated to the person's mental disorder). In such circumstances a Deprivation of

Liberty Safeguards order could run alongside detention under the mental health Act 1983.

4.4 **Bournewood (and Bournewood type cases)**

All references to Bournewood in this document refer to the European Convention on Human Rights (ECHR) ruling in respect of HL v the United Kingdom.

All references to Bournewood type cases refer to examples or cases that are considered to be sufficiently similar to the Bournewood Judgment to be classed as the same.

In short they refer to individuals who lack the mental capacity to make an informed decision about in-patient care and treatment for mental disorder but object to admission to a hospital or nursing home AND, in the case of hospitals do not object to being there or receiving care/treatment there.

4.5 **Managing Authorities**

"The person or body with management responsibility for the hospital or care home in which a person is, or may become, deprived of their liberty." (ibid, Key Words and Phrases, p.117)

4.6 **Supervisory Bodies**

"A … local authority (England) … that is responsible for considering a deprivation of liberty request received from a managing authority, commissioning the statutory assessments and, where all the assessments agree, authorising deprivation of liberty." (ibid, p.119)

4.7 **Urgent Authorisation of Deprivation of Liberty**

"An authorisation given by a managing authority for a maximum of seven days, which may subsequently be extended by a maximum of a further seven days on the direction of the supervisory body, that gives the managing authority lawful authority to deprive a person of their liberty in a hospital or care home while the standard deprivation of liberty authorisation process is undertaken." (ibid, p.120)

4.8 **Standard Authorisation of Deprivation Liberty**

"An authorisation given by a supervisory body, after completion of the statutory assessment process, giving lawful authority to deprive a relevant person of their liberty in the relevant hospital or care home." (ibid, p.119)

4.9 **Relevant Person**

A person who becomes (or may become) deprived of their liberty in a hospital or care-home and is (or is to be assessed) for care and treatment under the Deprivation of Liberty Safeguards.

4.10 **Relevant Person's Representative**

"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 safeguards." [11]

4.11 **Supreme Court Judgment, 19th March 2014**

(P (by his litigation friend the Official Solicitor) (Appellant) v Cheshire West and Chester Council and another (Respondents); P and Q (by their litigation friend, the Official Solicitor (Apellants) v Surrey County Council (Respondent) [2014] UK SC 19On appeal from [2011] EWCA Civ 1257; [2011] EWCA Civ 190)

At the time of writing (February 2017) this remains the most recent case law judgment defining Deprivation of Liberty.

For ease of reading, all subsequent references to this judgment in this policy and procedure are abbreviated to:-

P v Cheshire West and Chester Council and P and Q v Surrey County Council (Supreme Court, 19th March 2014).

4.12 For a full list of definitions please refer to Section 15 Glossary of Terms below.

5 DUTIES

5.1 **Board of Directors**

The Board of Directors has a duty to ensure that the Trust is compliant when operating within the framework of the Deprivation of Liberty Safeguards

5.2 **The Hospital Managers (Mental Health Act Managers, MHAM)**

The Hospital Managers (also referred to as the Mental Health Act Managers) have specific statutory duties which effectively makes them responsible for the Trust's implementation and management of the Deprivation of Liberty Safeguards insofar as it interacts with the Mental Health Act 1983

5.3 **Procedural Document Author**

The document author is responsible for ensuring that it is compliant with the relevant legislation, case-law and that it is consistent with the Trust's standards for procedural document format.

5.4 **Accountable Directors:**

The accountable Director of each Directorate* is responsible for ensuring there are robust governance systems in place for the implementation and management of the

Deprivation of Liberty Safeguards in their area.

*For High Secure Service this responsibility is held by the Executive Director of High Secure Services.

5.5 **The Legal Services Manager; Risk Management Department; Learning and Development Team; Clinical Audit Team; Research and Development Team; Knowledge Management Team:**

5.5.1 The Legal Service Team will be consulted for advice and guidance in relation to the clinical and administrative practice with respect to the law concerning deprivation of liberty, mental capacity and related topics.

5.5.2 The Risk Management Department will be consulted when appropriate in consideration of any risks arising from the Deprivation of Liberty Safeguards practice.

5.5.3 The Learning and Development Team must be consulted to enable the identification of potential implications for staff learning and development, in relation to Deprivation of Liberty Safeguards law practice. This will include a careful consideration of the provision and method of delivery for education and development.

5.5.4 The Clinical Audit, Research and Knowledge Management Teams will be consulted for general advice in relation to Deprivation of Liberty Safeguards law audits, research, reports etc.).

5.6 **Managers**

5.6.1 Managers are responsible for ensuring:

(a) that the staff for which they are responsible are aware of their responsibilities for Deprivation of Liberty Safeguards and practice commensurate with their role (this includes reporting DoLS authorisations to the Care Quality Commission)

(b) that an infrastructure is in place to support the training of all staff required for Deprivation of Liberty Safeguards law practice;

(c) all staff in their area are aware of their duty to pay due regard to the Code when working within the framework of Deprivation of Liberty Safeguards.

5.6.2 All staff in their area have ready access to the relevant Codes of Practice and are aware of and understand their duty to apply the 5 Statutory Principles whenever they are working within the framework of the Mental Capacity Act as a whole (including the Deprivation of Liberty Safeguards).

5.7 **Responsible Clinicians (RCs)**

All Responsible Clinicians employed within the Trust are responsible for ensuring that any assessment of capacity (including those required under the Mental Health Act 1983 – for example, in relation to consent to treatment) are Mental

Capacity Act 2005 compliant.

5.8 **MCA DoLS Mental Health Act Assessors**

All Mental Health Act Assessors (within the meaning of the Deprivation of Liberty Safeguards) employed within the Trust are responsible for ensuring that their registered Mental Health Act Assessor status is up-to-date. It is unlawful for a practitioner who does not have current Mental Health Act Assessor status to carry out such assessments. It is the responsibility of individual MCA DoLS Mental Health Assessors to ensure that the Trust acknowledges this function as part of their work and are thus indemnified by the Trust.

5.9 **MCA DoLS Best Interest Assessors**

Specific regulations set out who can be a Mental Capacity Act DoLS Mental Health Assessor. All Best Interest Assessors (within the meaning of the Deprivation of Liberty Safeguards) working for or on behalf of the Trust must ensure that their registration with the relevant local social services authority is current at the time they conduct such assessments. It is the responsibility of individual MH DoLS Best Interest Assessors employed by the Trust to ensure that this function is part of their work. Are indemnified by the Trust and have been issued with a letter of authority to act thereby confirming the indemnity arrangements

5.10 **All Staff**

5.10.1 Staff are responsible for:

(a) ensuring that they pay due regard to the respective Mental Capacity Act and Deprivation of Liberty Safeguards Codes of Practice when working within the framework of mental capacity;

(b) ensuring that they apply the Mental Capacity Act's 5 Statutory Principles when working within the framework of both the Deprivation of Liberty Safeguards and mental capacity;

(c) ensuring that they keep up-to-date with both Deprivation of Liberty Safeguards and mental capacity law practice commensurate with their role.

6 PROCESS

6.1 The Deprivation of Liberty Safeguards will be monitored by inspection bodies from the Care Quality Commission.

6.2 These inspection bodies will:

(a) Monitor the manner in which the Deprivation of Liberty Safeguards are being applied in practice;

(b) visit hospitals and care-homes for the purpose of inspection;

(a) interview people residing or accommodated in care homes and/or hospitals as appropriate;

(b) inspect the relevant Authorisation for Deprivation of Liberty records as appropriate;

(c) report annually (this may be a single, specific Deprivation of Liberty Safeguards report or it may be part of a report detailing a more generalised inspection);

(d) have the power to require the relevant Supervisory Bodies/Managing Authorities to disclose information as requested;

(e) Look at Deprivation of Liberty protocols/procedures within Supervisory Bodies/Managing Authorities.

6.3 Central Deprivation of Liberty Safeguards (DoLS) Register

6.3.1 The Trust will keep and maintain a Central DoLS register of all in-patients who are placed in receipt of DoLS. (**nb:** Currently, the Supervisory Bodies are experiencing a sizeable backlog and authorisation is not always completed in time. The register should include these people at the time the application is made and document the fact that those people have been listed by the Supervisory Body as low-priority.

6.3.2 The register will include a record of all *Urgent Authorisations* and all referrals for *Standard Authorisations*, irrespective of outcome.

6.3.3 The register will be kept and maintained by the Trust's MCA Lead (with support from the Mental Health Law Administrators and the Datix Administrator).

6.3.4 A similar process is required for persons in the community who are in receipt of DoLS. However, the responsibility for keeping and maintaining a register for this group lies with the relevant Managing Authority and not Mersey Care NHS Foundation Trust.

6.4 Reporting the Death of a Person in Receipt of DoLS to the Coroner's Office

6.4.1 From 3rd April 2017, the Policing and Crime Act 2017 amends the Coroners and Justice Act 2009 and the Chief Coroners Guidance No. 16, in that it effectively amends the requirement for Coroners to hold an inquest into any death where the deceased is subject to a DoLS authorisation. There are a number of extremely important exceptions – see 6.4.2.

6.4.2 If a patient is subject to either an Urgent or Standard DoLS authorisation and death occurs after 3rd April 2017, then the circumstances do not fall within the definition of "state detention" and as such an inquest/report to the coroner is not required, **UNLESS** any one of the following criteria are met:

- The death was violent or unnatural
- The cause of death is unknown

- Where there are concerns about the care given having contributed to the persons death
- The patient is subject to arrangements which amount to a deprivation of liberty but this is not authorised by the DoLS scheme (for example where the Trust is waiting for the authorisation to be given but the urgent authorisation has expired / or a standard authorisation has lapsed) then this still falls within the definition of 'state detention' and so a report to the Coroner is still required.

6.4.3 Deaths that meet the criteria at 6.4.2 must be reported to the relevant coroner using Form 12 (NOTIFICATION OF DEATH WHILST DEPRIVED OF LIBERTY). If UNSURE, contact the Trusts Legal Department based at Trust Headquarters, V7 Building.

6.4.4 Once a death is reported to the Trust's Datix Administrator s/he will cross-check against the DoLS Register. (**nb:** The Specialist Learning Disability Division uses ULYSSES and not DATIX).

6.4.5 If the deceased is in receipt of DoLS at the time of death, the Datix Administrator will notify the Trust Lead for MCA accordingly who in turn will arrange for the completion of the appropriate forms to be sent to the relevant Coroner's Office. (**nb:** The Specialist Learning Disability Division uses ULYSSES and not DATIX).

6.4.6 Similar processes are required for persons in the community who are in receipt of DoLS. However, the responsibility reporting the death for this group lies with the relevant Managing Authority and not Mersey Care NHS Foundation Trust.

6.5 **Documentation**

6.5.1 A number of Standard forms have been issued by ADASS for the purpose of the application, implementation and on-going management of the Deprivation of Liberty Safeguards process.

6.5.2 Staff are expected to use these forms as appropriate. Staff are not to use any alternative forms where the wording differs.

6.5.3 The forms and their explanatory notes are available electronically. They are also available on Epex, Pacis and via the Shared Drive on the Trust's website. (See 8.12.6 below) (**nb:** Within the Specialist learning Disability Division the documentation is also issued from the Mental Health Act Office. Within South Sefton Community Division, the documentation is accessed via Sharepoint.

6.5.4 Completed forms should be scanned and stored on either Epex or Pacis, Carenotes with hard copies kept in the patient's casenotes. (**nb:** Within Community Division the completed forms are entered in *EMIS*).

6.5.5 The original DoLS forms (applications and subsequent authorisations) should be forwarded to the MHL Administration Office and copied to the Trust MCA Lead.

6.5.6 The MHL Administration Office and the Trust MCA Lead must be copied into all correspondence relating to completed forms, either sent or received by the Trust (including emails enquiring about progress of a DoLS application etc). The full lists of forms are listed in the table at 6.7 below.

6.6 **Accessing the Forms**

Documentation

Copies of documentation are located within EPEX and can be accessed via the dark blue ribbon on the left of the screen by following the procedure below:

(a) select MHA 1983 and DOLS Guidance and Statutory Forms (printable) and click + to expand;

(b) select MHA DoLS References, Documents and Statutory Forms;

(c) select the document you require from the list;

(d) ctrl & click to open the document.

This documentation list can also be accessed via the T-Drive by following the procedure below:

(a) select T-Drive;

(b) select Mental Health Law Admin from the drop down list;

(c) select Forms;

(d) depending on the document required, select:

(i) 'STAT' for MHA docs

(ii) select Mental Health Act Forms Proofed 2011-2012,

(iii) ctrl & click on the required document to open it,

(e) 'DoLS' for Deprivation of Liberty forms;

(f) 'Rights' for copies of x.132 rights leaflets.

Copies of completed forms, accompanying information and subsequent authorization paperwork will be saved to the patient's record.

PACIS Users can locate copies of documents via the Document Template Icon on their desk top, or via the Secure Division Document Templates icon within Share Point.

Completed forms, accompanying information and subsequent authorisation paperwork will be saved to the patient's record.

RiO Users will be able to locate copies of documents via - same route as for EPEX for now , via epex and / or the T- Drive, as above.

Completed forms, accompanying information and subsequent authorisation paperwork will be saved to the patient's record.

SPECIALIST LEARNING DISABILITY DIVISION

- There should not be a need for access to these forms out of normal hours given the nature of the patient population. Access to the forms is through contact with the MHA Administration Office or the MCA DoLS Divisional Lead.
- Completed forms, accompanying information and subsequent authorisation paperwork will be stored in *Carenotes*, Legal Tab.

COMMUNITY DIVISION

- Documentation can be accessed within Sharepoint or by contacting the MCA Lead.
- Completed forms, accompanying information and subsequent authorization paperwork will be stored in *EMIS.*

6.7 Table of All Deprivation of Liberty Safeguards (DoLS) Forms

No.	Title	Purpose	Stored	Completed By	Copies sent to
Form 1	**Title**	**Request for an Urgent, Extended Urgent and/or Standard Authorisation of Deprivation**			
	Purpose	Formal authority to deprive a person of their liberty			
	Location	The blank form is electronically stored (See 6.6 above) and can be completed on-line			
	Storage	The completed Form 1 must be saved to (See 6.6 above)			
	Copies	Copies of the completed form must be sent to the Supervisory Body, the Mental Health Law Administration Office and the Trust Lead for the MCA			
Form 2	**Title**	**Request for a Further Standard Authorisation**			
	Purpose	Formal authority to deprive a person of their liberty for a further period			
	Location	The blank form is electronically stored in (See 6 .6 above) and can be completed on-line			
	Storage	The completed Form 2 must be saved to (See 6.6 above)			
	Copies	Copies of the completed form must be sent to the Supervisory Body, the Mental Health Law Administration Office and the Trust Lead for the MCA			
Form 3	**Title**	**Age, Mental Capacity, No Refusals, Best Interests Assessments and Selection of Representative**			
	Purpose	This combined form contains 4 separate assessments and includes selection of representative. If any assessment is negative there is no need to complete the others unless specifically commissioned to do so by the Supervisory Body.			
	Location	Supervisory Body responsibility. No action requested of the Trust unless specifically required to do so by the Supervisory Body			

	Storage	Once completed Form 3 is received it should be stored in (See 6.6 above)
	Copies	Any copies received by the wards from the Supervisory Body should be forwarded to the Mental Health Law Administration Office and the Trust Lead for the MCA
Form 4	**Title**	**Mental Capacity, Mental Health and Eligibility Assessments**
	Purpose	This combined form contains 3 separate assessments; if any assessment is negative there is no need to complete the others unless specifically commissioned to do so by the Supervisory Body
	Location	Supervisory Body responsibility. No action requested of the Trust unless specifically required to do so by the Supervisory Body
	Storage	Once completed Form 4 is received it should be stored in (See 6.6 above)
	Copies	Any copies received by the wards from the Supervisory Body should be forwarded to the Mental Health Law Administration Office and the Trust Lead for the MCA .
Form 5	**Title**	**Standard Authorisation Granted**
	Purpose	Formal confirmation by the Supervisory Body to the Trust that a standard authorisation has been ***granted***
	Location	Supervisory Body responsibility. No completion of this Form required of the Trust
	Storage	Once completed Form 5 is received it should be stored in (See 6.6 above)
	Copies	Any copies received by the wards from the Supervisory Body should be forwarded to the Mental Health Law Administration Office and the Trust Lead for M C A
Form 6	**Title**	**Standard Authorisation Not Granted**
	Purpose	Formal confirmation by the Supervisory Body to the Trust that a standard authorisation has been ***declined***
	Location	Supervisory Body responsibility. No completion of this Form required of the Trust.
	Storage	Once completed Form 6 is received it should stored in (See 6.6)
	Copies	Any copies received by the wards from the Supervisory Body should be forwarded to the Mental Health Law Administration Office and copied to the Trust MCA Lead
Form 7	**Title**	**Suspension of Authorisation**
	Purpose	Completed by the Managing Authority when it is considered that an existing standard authority of deprivation is no longer required
	Location	The blank form is electronically stored in (See 6 .6 above) and can be completed on-line
	Storage	The completed Form 7 must be saved to (See 6.6 above)
	Copies	Copies of the completed form must be sent to the Supervisory Body, the Mental Health Law Administration Office and the Trust Lead for MCA
Form 8	**Title**	**Termination of Appointment as Representative**
	Purpose	Formal notification by the Supervisory Body that a person previously identified as the *Relevant Person's (patient's) Representative* is no longer authorised to act in that capacity
	Location	Supervisory Body responsibility. No completion of this Form required of the Trust
	Storage	Once completed Form 8 is received it should be stored in (See 6.6 above)
	Copies	Any copies received by the wards from the Supervisory Body should be forwarded to the Mental Health Law Administration Office and the Trust Lead for the MCA
Form 9	**Title**	**Standard Authorisation Ceased**

	Purpose	Formal notification that a standard authorisation has ceased. May be completed by either the Supervisory Body or the Managing Authority
	Location	The blank form is electronically stored in (See 6 .6 above) and can be completed on-line
	Storage	The completed Form 9 must be saved to (See 6.6 above)
	Copies	Copies of the completed form must be sent to the Supervisory Body, the Mental Health Law Administration Office and the Trust Lead for the MCA
Form 10	**Title**	**Request for a Review of an existing Standard Authorisation for Deprivation**
	Purpose	Formal notification that a review of a *relevant person's* current standard authorisation is requested
	Location	The blank form is electronically stored in (See 6 .6 above) and can be completed on-line
	Storage	The completed Form 10 must be saved to (See 6.6 above)
	Copies	Copies of the completed form must be sent to the Supervisory Body, the Mental Health Law Administration Office and the Trust Lead for the MCA
Form 11	**Title**	**Independent Mental Capacity Advocate (IMCA) Referral**
	Purpose	Referral to the appropriate IMCA service where the Relevant Person requires advocacy support.
	Location	Supervisory Body responsibility. No action requested of the Trust unless specifically required to do so by the Supervisory Body
	Storage	Once completed Form 11 is received it should be stored in (See 6.6 above)
	Copies	Any copies received by the wards from the Supervisory Body should be forwarded to the Mental Health Law Administration Office and the Trust Lead for the MCA
Form 12 see 6.4 above)	**Title**	**Notification to Coroner - see 6.4 above**
	Purpose	Formal notification to coroner of the death of a person whilst in receipt of assessment. Care and/or treatment under a Standard Authorisation
	Location	The blank form is electronically stored in (See 6.6 above) and can be completed on-line.
	Storage	The completed Form 12 must be saved to (See 6.6)
	Copies	Copies of the completed form must be sent to the Coroner's Office, the Supervisory Body, the Mental Health Law Administration Office and the Trust Lead for MCA.
CQC Statutory Notification - *'Notification about an application to deprive a person of their liberty'*	**Title**	**Notification about an application to deprive a person of their liberty**
	Purpose	Formal notification to the CQC that the Managing Authority has submitted an application for a Standard DoLS Authorisation to the Supervisiory Body ***AND*** the outcome of that application (either granted or declined)
	Location	CQQ website link: http://www.cqc.org.uk/guidance-providers/notifications/application-deprive-person-their-liberty-dols-
	Storage	The completed CQC notification must be saved to (See 6.6)
	Copies	Copies of the completed form must be sent to the CQC via the email link, retained with the patient's record, sent to the Mental Health Law Administration Office and the Trust Lead for MCA

6.8 Who Completes Form 1 Urgent Authorisation of Deprivation, Extended Urgent Authorisation and Application for Standard Authorisation of Deprivation

6.8.1 In respect of persons to be considered for authorised deprivation of liberty in a Mersey Care NHS Foundation Trust hospital Form 1 must be completed by:

(a) that person's Responsible Clinician; or

(b) the Manager of the hospital ward to which that person has been admitted to; or

(c) in the absence of the Ward Manager the nurse who is in charge of the ward at the time the form(s) require completion.

6.9 **Notification to the CQC about the outcome of a Standard DoLS application - *CQC Statutory Notification about an application to deprive a person of their liberty***

6.9.1 When the outcome of a DoLS application is received, whether the application has been accepted (Form 5) or declined (Form 6), the CQC must be notified using form ***CQC Statutory Notification*** - ***'Notification about an application to deprive a person of their liberty'***. This must be completed by:

(a) the Manager of the hospital ward to which that person has been admitted to;

or

(b) in the absence of the Ward Manager, the nurse who is in charge of the ward at the time the form(s) require completion.

The notification can be accessed using the link below.
http://www.cqc.org.uk/guidance-providers/notifications/application-deprive-person-their-liberty-dols-notification-form

6.9.2 A copy of the notification must be printed and retained with the patient's record. Copies of the notification must also be sent to the MHL Administration Office and MHA & MCA Lead. The MHL Administration Office will monitor compliance with this notification.

6.10 **What (currently) Amounts to a Deprivation Liberty**

6.10.1 P v Cheshire West and Chester Council and P and Q v Surrey County Council (Supreme Court, 19th March 2014).

On appeal the Supreme Court re-defined the distinction between a restriction and a deprivation of liberty with the boundaries of the latter being significantly extended. The consequence is that a much greater number of cases previously managed under the general powers of the Mental Capacity Act are now managed under the Deprivation of Liberty Safeguards and/or the Court of Protection.

KEY POINTS

(a) **THE TEST FOR DEPRIVATION**

Where there is no valid consent to living arrangements, the acid test of a deprivation of liberty is that the person is:

(i) not free to leave; and…

(ii) is under continuous supervision and control;

(b) **WHAT THE TEST IS NOT**

The test is not concerned with how benevolent the situation is ("A gilded cage is still a cage" Lady Hale). Nor is it concerned with:

(i) whether or not the person is objecting,

(ii) the reason or purpose behind the placement,

(iii) the 'relative normality' of the placement;

Consequently:

(i) the application of best interest principles has no relevance in determining whether or not a deprivation of liberty is, has or will occur,
(ii) Similarly, where a person lives (including her/his own home) has no relevance in determining whether or not a deprivation of liberty is, has or will occur.

COURT DECISION

All previous judgments of both cases were overturned meaning that, despite the good intentions, the manner in which the Relevant Persons had been managed/cared for, amounted to a deprivation of liberty and so required authorisation.

6.11 **Applying the above Supreme Court Judgment (19/03/2014)**

6.11.1 <u>Where P is a hospital in-patient for the assessment, care and/or treatment of mental disorder</u>

- Does P have the capacity to make an informed decision about being in hospital and/or receiving prescribed treatment?

  If YES then P cannot be managed under the Mental Capacity Act. Admitting P to and/or keeping her /him in hospital without valid consent for the purpose of assessing/treating mental disorder can therefore only be authorised under the

Mental Health Act 1983 powers.

If NO then…

- Does P object to being in hospital and/or receiving prescribed treatment for mental disorder?

  If YES then either discharge from hospital or assess for detention under the Mental Health Act 1983 (Do not consider managing P in hospital under the Mental Capacity Act as the Mental Health Act will always take precedence in these circumstances

  If NO then P can be managed under the Mental Capacity Act 2005. MHA Code of Practice Chapter 13 refers to considering the two regimes – MHA and/or MCA

You must now ask yourself:

- In managing P under the Mental Capacity Act will we prevent her/him from leaving should s/he wish to do so AND are we keeping P under continuous supervision and control?

  If YES then complete Form 1 (Urgent Order of Deprivation) Request for an Urgent, Extended Urgent and/or Standard Authorisation of Deprivation.

  Send the completed forms the appropriate Supervisory Body (see Appendix 1) and copies to the Mental Health Law Administrator.

  The Urgent Order for Deprivation takes immediate effect and lasts for up to 7 days.

  The Standard Authorisation should be completed by the Supervisory Body within that 7 day period. If it looks like taking longer it may be necessary to complete an extension of the Urgent Order (Form 1) which will last for up to a further 7 days.

  If there is a breach in statutory timeframe by the Supervisory body then the Trust escalation process must be followed-Please see appendix 1.

  If NO then P may be managed under the general powers of the Mental Capacity Act 2005. However, clinicians are advised to seek advice from the Trust's legal department if they reach this decision.

  If UNSURE either seek advice from the Trust's Legal Department OR complete and process Form 1 as above.

  If, at any point during either the application process or whilst P is in receipt of the Deprivation of Liberty Safeguards, her/his relative or other person close to P objects the Trust must try and seek local resolution. Should this prove unsuccessful advice should be sought from the Trust's Legal Department as it

may be necessary to refer the case to the Court of Protection.

6.12 **Where P is to be discharged to a Registered Care Home or Registered Nursing Home**

If P lacks capacity to give valid consent to being managed in a registered nursing home/care home then, the placement in question must be informed of the necessary support on discharge and whether the multi-disciplinary team believe this to meet the criteria for Deprivation of Liberty.

Even if P is already in receipt of a Standard Authorisation this is non-transferable and a fresh application will be required. That responsibility lies with the prospective placement.

Wherever practicable the prospective placement should be given sufficient notice to complete the application up to 21 days in advance of transfer (this will negate the need to complete an Urgent Authorisation).

If the placement appears unsure about how to proceed they should be advised to get guidance from the relevant supervisory body or their own legal team/ solicitor.

6.13 **Where P is to be discharged to Supported Living or their own home with support**

The Deprivation of Liberty safeguards only apply in hospitals, registered care homes and registered nursing homes

All other placements such as small group homes, supported living accommodation etc are not authorised to apply the Deprivation of Liberty Safeguards.

Instead they must apply to the Court of Protection if it is felt that P lacks capacity and is likely to be deprived of her/his liberty.

Again, the responsibility for making such applications lies with the commissioning organisation (Local Authority or CCG) and not Mersey Care NHS Foundation Trust.

Where the Trust is directly responsible for the placement or directly provides the care they may be joined as a party to the Court of Protection application.

6.14 **Patients Attending Day Centre's/Day Hospitals**

Where Trust Services send P to a Day Centre or Day Hospital on a regular basis it must be recognised that this may amount to a deprivation of liberty. Depending upon the other aspects of the person's care arrangements.

Practitioners are advised to contact the Trust's Legal Department on a case-by-case basis for guidance in these circumstances.

6.15 **General Hospitals**

If P is in hospital for assessment and/or treatment of a physical disorder and lacks the capacity to give valid consent then the same principles apply as in 6.10.1 above.

Note, however, that the Mental Health Act could not be used in these circumstances unless P has a mental disorder which, of itself warrants detention under the Mental Health Act.

By contrast, note also, that where the two disorders are not linked, the Mental Capacity Act (including the Deprivation of Liberty Safeguards) could be used for the treatment of the physical disorder even where P is detained under the Mental Health Act for treatment of the mental disorder (This is the only set of circumstances where the Deprivation of Liberty Safeguards may be used on a patient detained under the Mental Health Act 1983, **however,** DoLS can only be used alongside the MHA if P is on leave to the general hospital).

The responsibility for managing P under the Mental Capacity Act/Deprivation of Liberty Safeguards lies with the hospital that prescribes and administers the treatment (they will be the Managing Authority, as defined above, for this part of the person's care).

7 CONSULTATION

7.1 The Deprivation of Liberty Safeguards is included amongst the Trust's core business.

7.2 Consultation with all services is a seamless process that is continuously being developed.

7.3 This process will continue after ratification and without time-limit.

7.4 Any recommendations for change, at any time, will be seriously considered although it must be recognised that much of this policy is bound by statutory requirement.

8 TRAINING AND SUPPORT

8.1 Deprivation of Liberty and the Deprivation of Liberty Safeguards is considered core business.

8.2 Traditional face to face training has been provided, Trust-wide and annually since 2010.

8.3 In 2017 an e-learning package was introduced which mandatory for all staff is working within the framework of the Mental Capacity Act, the Deprivation of Liberty Safeguards and the Deprivation of Liberty Safeguards.

8.4 In addition Level 2 training for professional staff working within the frame

work of the Deprivation of Liberty Safeguards is also maintained with a dedicated e-learning package developed for Community Staff in 2020.

9 MONITORING

9.1 The process for monitoring compliance with the standards outlined in this policy is detailed below:

System for the Monitoring of Compliance with the Policy and Procedure for the Development, Ratification, Implementation, Review and Archive of Procedural Documents.	
Monitoring of compliance with this policy will be undertaken by:	Monitoring of the outcomes of Deprivation of Liberty Safeguards monitoring visits undertaken and through quarterly/annual audit.
Should shortfalls be identified the following actions will be taken:	Action plans will be developed for implementation and monitoring through the MHA managers committee
The results of monitoring will be reported to:	MHA managers committee

10 UPDATE ON LIBERTY PROTECTION SAFEGUARDS (LPS)

In July 2018, the government published a Mental capacity (Amendment) Bill which passed into law in May 2019. It replaces the Deprivation of Liberty Safeguards (DOLS) with a scheme known as the Liberty Protection Safeguards.

The target date for implementation is October 2020. Prior to then, a revised MCA code of practice will be published which the sector trusts will bring clarity about how LPS will work in practice.

Key features of LPS:

Age

LPS applies to individuals aged 16 and over.

Statutory Definition.

No statutory definition has been provided with Act. Guidance is to be given within the Code of Practice to the LPS which are yet to be drafted.

Responsible bodies.

Responsible bodies will be:

1. Hospital managers: for arrangements in an NHS hospital
2. CCG or local health Board: in cases where a person is eligible for Continuing Health Care.
3. Local Authority: in all other cases.

The conditions

For the responsible body to authorize any deprivation of Liberty, it needs to be clear that:

- The person lacks the capacity to consent to the care arrangements.
- The person has a mental disorder.
- The arrangements are necessary to prevent harm to the cared-for person, and proportionate to the likelihood and seriousness of that harm.

Pre- Authorisation

Prior to authorization, a responsible body must carry out consultations with P and others. This must be by someone not involved in day to day care to determine the reasonableness of a conclusion that the above three are met.

Safeguards and representation.

P has the right to regular reviews and information and the right to challenge the authorization via the Court of Protection which will oversee LPS. P will be provided with representation by an appropriate person or IMCA (if no appropriate person is forthcoming)

Reviews, renewals and Variations.

An authorization record must include a programme of regular reviews. The authorization can be renewed in first instance for one year and thereafter for periods of up to three years

11 EQUALITY AND HUMAN RIGHTS ANALYSIS

Area covered: Trust Wide

What are the intended outcomes of this work? This policy has been reviewed and updated. It provides a framework and guidance re the Implementation of the Deprivation of Liberty Safeguards.
Who will be affected? Service users, carers and staff.

Evidence
What evidence have you considered? The last equality and human rights assessment completed in 2014. Changes to the policy have been made as identified in the equality assessments of 2010 and 2014.
Disability (including learning disability) Deprivation of Liberty is defined under Article 5 of the *European Convention on Human Rights:* "Everyone has the right to liberty and security of person. No-one shall be deprived of his liberty ..." (Article 5(1)) Lawful arrest (e.g. criminal prosecution), lawful detention for mental disorder (e.g. under the Mental Health Act 1983), the lawful detention of a person to prevent the spread of a notifiable, communicable disease and the lawful arrest/detention of illegal immigrants are clear examples of cases where a person may be deprived of their liberty without there being any breach of Article 5.
Sex No issues to note
Race No issues to note
Age No issues to note
Gender reassignment (including transgender) No issues to note
Sexual orientation No issues to note
Religion or belief No issues to note
Pregnancy and maternity No issues to note
Carers No issues to note
Other identified groups No other groups identified
Cross Cutting

Human Rights	Is there an impact? How this right could be protected?
Right to life (Article 2)	Human Rights based approach supported
Right of freedom from inhuman and degrading treatment (Article 3)	Human Rights based approach supported
Right to liberty (Article 5)	Human Rights Based Approach Supported Legal safeguards and protections in place "The European Court of Human Rights (ECtHR) has drawn a distinction between the deprivation of liberty of an individual (which is unlawful, unless authorised) and restrictions on the liberty of movement of an individual." (*ibid,* para. 2.1, p.16*)* The distinction between unlawful Deprivation of Liberty and lawful Restriction of Liberty is "...one of degree or intensity. It may therefore be helpful to envisage a scale, which moves from 'restraint' or 'restriction' to 'deprivation of liberty'. Where an individual is on the scale will depend on the concrete circumstances of the individual and may change over time." (*ibid*, para. 2.3, p.17) In conclusion, Deprivation of Liberty starts where Restriction of Liberty stops and the fine line differentiating the two can only be determined by considering the full facts of each individual case in the light of evolving case-law. Consequently, it is an essential requirement for all practitioners working within the framework of mental health to be aware of the latest case-law developments in relation to mental health, mental capacity and human rights law.
Right to a fair trial (Article 6)	Human Rights Based Approach Supported. Legal safeguards and protections in place
Right to private and family life (Article 8)	Human Rights Based Approach Supported
Right of freedom of religion or belief (Article 9)	Human Rights Based Approach Supported
Right to freedom of expression **Note: this does not include insulting**	This right is not engaged

language such as racism (Article 10)	
Right freedom from discrimination (Article 14)	Human Rights Based Approach Supported

Engagement and Involvement *detail any engagement and involvement that was completed inputting this together.*
N/A

Summary of Analysis *This highlights specific areas which indicate whether the whole of the document supports the trust to meet general duties of the Equality Act 2010*
Eliminate discrimination, harassment and victimisation This policy will be monitored to ensure the possibility of indirect discrimination is examined and action is taken where needed. The Deprivation of Liberty Safeguards is included amongst the Trust's core business
Advance equality of opportunity N/A
Promote good relations between groups N/A

What is the overall impact? The policy has been written in line with the legal framework to protect the rights of vulnerable people

Addressing the impact on equalities *There needs to be greater consideration re health inequalities and the impact of* each individual development /change in relation to the protected characteristics and vulnerable groups

Action planning for improvement
Detail in the action plan below the challenges and opportunities you have identified. *Include here any or all of the following, based on your assessment* • *Plans already under way or in development to address the **challenges** and **priorities***

identified.

- *Arrangements for continued engagement of stakeholders.*
- *Arrangements for continued monitoring and evaluating the policy for its impact on different groups as the policy is implemented (or pilot activity progresses)*
- *Arrangements for embedding findings of the assessment within the wider system, OGDs, other agencies, local service providers and regulatory bodies*
- *Arrangements for publishing the assessment and ensuring relevant colleagues are informed of the results*
- *Arrangements for making information accessible to staff, patients, service users and the public*
- *Arrangements to make sure the assessment contributes to reviews of DH strategic equality objectives.*

For the record **Name of persons who carried out this assessment: Yvette Reader**
Date assessment completed: 09.03.2020
Name of responsible Director: Medical Director
Date assessment was signed:

12 ACTION PLAN TEMPLATE

This part of the template is to help you develop your action plan. You might want to change the categories in the first column to reflect the actions needed for your policy.

Category	Actions	Target date	Person responsible and their area of responsibility
Monitoring	Full monitoring plan in section nine		
Engagement	Deprivation of Liberty Safeguards is included amongst the Trust's core business.		
Increasing accessibility	Any leaflets or information contained within this policy should be made available in the format or language of choice as required by service users/patients.		

REFERENCES AND BIBLIOGRAPHY

References

References in relation to the development of this policy include:

- The Mental Health Act 1983
- The Mental Health Act Code of Practice, 2008 edition
- The Mental Capacity Act 2005
- The Mental Capacity Act Code of Practice, 2007 edition
- The Deprivation of Liberty Safeguards Code of practice, 2008 edition
- Trust Policy Reference No. MC01
- Trust Policy Reference No. SD17
- Trust Policy Reference No. SD19

Bibliography

1. The Mental Capacity Act 2005 (including the Deprivation of Liberty Safeguards delegated to this Act under the Mental Health Act 2007)
2. The Code of Practice *Mental Capacity Act 2005* (2007 ed)
3. The Deprivation of Liberty Safeguards: Addendum to the Mental Capacity Act 2005 Code of Practice
4. The Human Rights Act 1998
5. The European Convention on Human Rights)
6. The Care Programme Approach (2008 version)
7. The Mental Health Act 2007
8. The Mental Health Act 1983 (as amended by the Mental Health Act 2007)
9. The Code of Practice *Mental Health Act* 1983 (2008 ed)
10. The Reference Guide to the Mental Health Act 1983 (2008 ed)
11. *P (by his litigation friend the Official Solicitor) (Appellant) v Cheshire West and Chester Council and another (Respondents); P and Q (by their litigation friend, the Official Solicitor (Apellants) v Surrey County Council (Respondent) [2014] UK SC 19On appeal from [2011] EWCA Civ 1257; [2011] EWCA Civ 190*

GLOSSARY OF TERMS

All procedural documentation should include a glossary of terms to enable the reader to understand any technical terms and ensure the effective interpretation of the fundamental requirements of the document as defined by the document author.

For this policy the following glossary is provided:

Phrase or Term	**Definition and Explanation**
(the) Act	In this document, unless specifically stated this will always refer to the Mental Capacity Act 2005.
Advance Decision to refuse treatment	A decision to refuse specified treatment made in advance by a person who has capacity to do so. This decision will then apply at a future time when that person lacks capacity to consent to, or refuse, the specified treatment. Specific rules apply to advance decisions to refuse life sustaining treatment.

Advocacy	Independent help and support with understanding issues and putting forward a person's own views, feelings and ideas.
Age Assessment	An assessment, for the purpose of the deprivation of liberty safeguards, of whether the relevant person has reached age 18.
Approved Mental health Professional (AMHP)	A social worker or other professional approved by a local social services authority to act on behalf of a local social services authority in carrying out a variety of functions.
Assessor	A person who carries out a deprivation of liberty safeguards assessment.
Best Interests Assessment	An assessment, for the purpose of the deprivation of liberty safeguards, of whether deprivation of liberty is in a detained person's best interests, is necessary to prevent harm to the person and is a proportionate response to the likelihood and seriousness of that harm.
Bournewood Judgment	The commonly used term for the October 2004 judgment by the European Court of Human Rights in the case of *HL v the United Kingdom* that led to the introduction of the deprivation of liberty safeguards.
Capacity	Short for mental capacity. The ability to make a decision about a particular matter at the time the decision needs to be made. A legal definition is contained in section 2 of the Mental Capacity Act 2005.
Care Home	A care facility registered under the Care Standards Act 2000.
Care Quality Commission	The new integrated regulator for health and adult social care that, subject to the passage of legislation, will take over regulation of health and adult social care from 1 April 2009.
Carer	Someone employed to provide personal care for people who need help because of sickness, age or disability. They could be employed by the person themselves, by someone acting on the person's behalf or by a care
Conditions	Requirements that a supervisory body may impose when giving a standard deprivation of liberty authorisation, after taking account of any recommendations made by the best interest's assessor.
Consent	Agreeing to a course of action – specifically in this document, to a care plan or treatment regime. For consent to be legally valid, the person giving it must have the capacity to take the decision, have been given sufficient information to make the decision, and not have been under any duress or inappropriate pressure.
Court of Protection	The specialist court set up under the **Mental Capacity Act** to deal with all issues relating to people who lack **capacity** to make decisions for themselves.

Deprivation of liberty	A term used in Article 5 of the **European Convention on Human Rights (ECHR)** to mean the circumstances in which a person's freedom is taken away. Its meaning in practice has been developed through case law (MCA Code of Practice Cross Refs: 6.13-6.14, 6.49-6.54, 7.44, 13.2, 13.16).
Deprivation of liberty safeguards	The framework of safeguards under the **Mental Capacity Act** (as amended by the Mental Health Act 2007) for people who need to be deprived of their liberty in their best interests for care or treatment to which they lack the **capacity** to **consent** themselves (See MCA Deprivation of Liberty Safeguards Code of Practice)
Deprivation of liberty safeguards Assessment	Any one of the six assessments that need to be undertaken as part of the standard deprivation.
Deputy (or Court-appointed deputy)	A person appointed by the **Court of Protection** under section 16 of the **Mental Capacity Act** to take specified decisions on behalf of someone who lacks **capacity** to take those decisions themselves. This is not the same thing as the **nominated deputy** Sometimes appointed by the **doctor** or **approved clinician** in charge of a Patient's treatment.
Donee	Someone appointed under a Lasting Power of Attorney who has the legal right to make decisions within the scope of their authority on behalf of the person (the donor) who made the Lasting Power of Attorney.
Eligibility Assessment	An assessment, for the purpose of the deprivation of liberty safeguards, of whether or not a person is rendered ineligible for a Standard deprivation of liberty authorisation because the authorisation would conflict with requirements that are, or could be, placed on the person under the Mental Health Act 1983.
European Convention on Human Rights (ECHR)	The European Convention for the Protection of Human Rights and Fundamental Freedoms. The substantive rights it guarantees are largely incorporated into UK law by the **Human Rights Act 1998**
Guiding principles	See **Statutory Principles** below
Human Rights Act 1998	A law largely incorporating into UK law the substantive rights set out in the European Convention on Human Rights.

Hospital managers	The organisation (or individual) responsible for the operation of **the Act** in a particular hospital (eg an **NHS trust**, an **NHS foundation trust** or the owners of an **independent hospital**). Hospital managers have various functions under the Act, which include the power to **discharge** a patient. In practice, most of the hospital managers' decisions are taken on their behalf by individuals (or groups of individuals) authorised by the hospital managers to do so. This can include clinical staff. Hospital managers' decisions about discharge are normally delegated to a "**managers' panel**" of three or more people
Ill treatment	Section 44 of the Act makes it an offence to ill- treat a person who lacks capacity by someone who is caring for them, or acting as a deputy or attorney for them. That person can be guilty of ill treatment if they have deliberately ill-treated a person who lacks capacity, or been reckless as to whether they were ill-treating the person or not. It does not matter whether the behavior was likely to cause, or actually caused harm or damage to the victim's health.
Independent Mental Capacity Advocate (IMCA)	An advocate available to offer help to patients under arrangements which are specifically required to be made under the **Mental Capacity Act 2005**.
Lasting Power of Attorney (LPA)	A Power of Attorney created under the Act and replacing the previous Enduring Power of Attorney (EPA).
Life-sustaining treatment	Treatment that, in the view of the person providing health care, is necessary to keep a person alive.
Liberty Protection safeguards	The Law to replace the current DOLS system
Local Authority	In the deprivation of liberty safeguards context, the local council responsible for social services in any particular area of the country (Note, this duty used to be shared with the Primary Care Trusts until the latter ceased to exist).
Managers	See **hospital managers**.
Managing Authority	The person or body with management responsibility for the hospital or care home in which a person is, or may become, deprived of their liberty.
Maximum authorisation period	The maximum period for which a supervisory body may give a standard deprivation of liberty authorisation, which must not exceed the period recommended by the best interest's assessor, and which cannot be for more than 12 months.
Mental capacity	See *Capacity*
Mental Capacity Act	The Mental Capacity Act 2005. An Act of Parliament that governs decision-making on behalf of people who lack **capacity**, both where they lose capacity at some point in their lives, eg as a result of dementia or brain injury, and where the incapacitating condition has been present

Mental Capacity Assessment	An assessment, for the purpose of the deprivation of liberty safeguards, of whether a person lacks capacity in relation to the question of whether or not they should be accommodated in the relevant hospital or care home for the purpose of being given care or treatment.
Mental Health Act 1983	A law primarily dealing with the management and rights of persons detained in hospital for the purpose of assessment, care and treatment against their will. It also has limited application in the community through Community Treatment Orders, Guardianship, Conditional Discharge Leave of Absence and section 117 aftercare
No Refusals Assessment	An assessment, for the purpose of the deprivation of liberty safeguards, of whether there is any other existing authority for Decision-making for the relevant person that would prevent the giving of a standard deprivation of liberty authorisation. This might include any valid advance decision, or valid decision by a deputy or donee appointed under a Lasting Power of Attorney.
Office of the Public Guardian (OPG)	The Public Guardian is an officer established under section 57 of the Act. The Public Guardian is supported by the OPG, which supervises deputies, keeps a register of deputies, LPAs, EPAs, checks on what attorneys are doing and investigates any complaints about attorneys or deputies
Personal welfare	Personal welfare decisions are any decisions about a person's healthcare, where they live, what clothes they wear, what they eat and anything needed for their general care and well-being. Attorneys and deputies can be appointed to make decisions about personal welfare on behalf of a person who lacks capacity.
Qualifying Requirement	Any one of the six qualifying requirements (age, mental health, mental capacity, best interests, eligibility and no refusals) that need to be assessed and met in order for a standard deprivation of liberty authorisation to be given.
Relevant hospital or care home	The hospital or care home in which the person is, or may become, deprived of their liberty.
Relevant Person	A person who is, or may become, deprived of their liberty in a hospital or care home.
Relevant Person's Representative	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 safeguards.

Restraint	See section 6(4) of the Act. The use or threat of force to help do an act which the person resists, or the restriction of the person's liberty of movement, whether or not they resist. Restraint (and hence restriction of movement) *may* be authorised under the MCA but *only* where it is necessary to protect the person from harm, is proportionate to the risk of harm posed AND does not amount to deprivation of liberty (the latter of which can only be authorised under the Act's Deprivation of Liberty Safeguards and/or the Court of Protection).
Restriction of Liberty	An act imposed on a person that is not of such a degree or intensity as to amount to a deprivation of liberty.
Standard Authorisation	An authorisation given by a supervisory body, after completion of the statutory assessment process, giving lawful authority to deprive a relevant person of their liberty in the relevant hospital or care home.
Statutory Principles	The principles set out in **chapter 2** that have to be considered when decisions are made under the Act
Supervisory Body	A local authority, Welsh Ministers or a local health board that is responsible for considering a deprivation of liberty request received from a managing authority, commissioning the statutory Assessments and, where all the assessments agree, authorising deprivation of liberty.
Two-stage test of capacity	Using sections 2 and 3 of the Act to assess whether or not a person has capacity to make a decision for themselves at that time.
Unauthorised Deprivation of Liberty	A situation in which a person is deprived of their liberty in a hospital or care home without the deprivation being authorised by either a standard or urgent deprivation of liberty authorisation.
Urgent Authorisation	An authorisation given by a managing authority for a maximum of seven days, which may subsequently be extended by a maximum of a further seven days by a supervisory body, that gives the managing authority lawful authority to deprive a person of their liberty in a hospital or care home while the standard deprivation of Liberty authorisation process is undertaken.
Wilful neglect	An intentional or deliberate omission or failure to carry out an act of care by someone who has care of a person who lacks (or whom the person reasonably believes lacks) capacity to care for themselves. Section 44 makes this an offence of willful neglect of a person who lacks
Written statements of wishes and feelings (also referred to as Advance Statements)	Written statements the person might have made before losing capacity about their wishes and feelings regarding issues such as the type of medical treatment they would like (as opposed to medical treatment they might refuse – see Advance Decision), where they may choose to live, or how they wish to be cared for. They are not the same as advance decisions and are not binding.

Local Authority Contacts (for Supervisory Bodies)

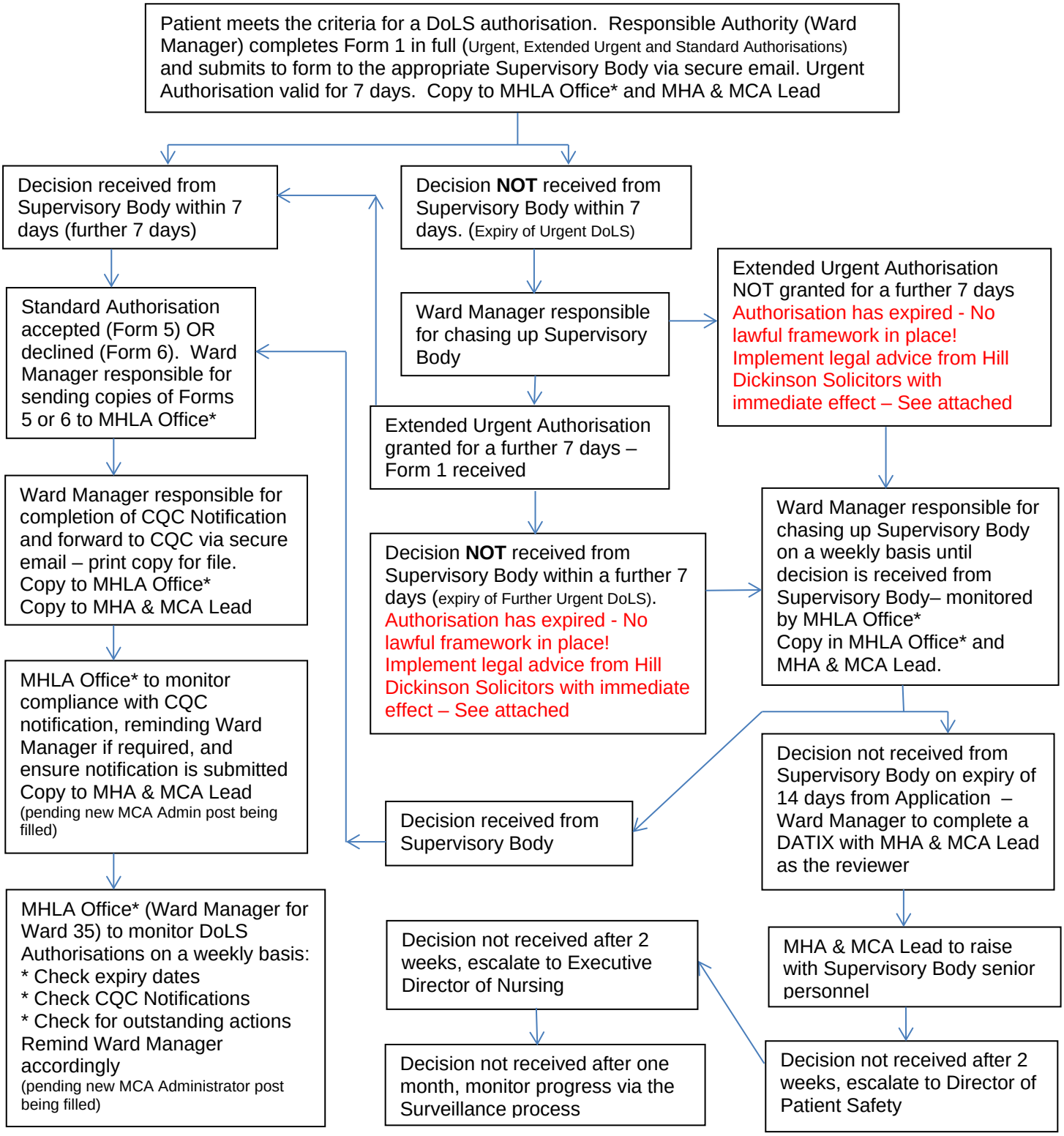
Local Authority Contact details (Supervisory Body) for Deprivation of Liberty Safeguards

Name of Supervisory Body	Name of person in the Supervisory Body to whom enquiries can be made	Address to which authorisation requests should be sent	Phone Number / Fax Number	Email Address for Authorisation
LIVERPOOL	Quality Assurance and Adult Safeguarding Unit (QAASU) Michelle Barry Lynne Milne	Liverpool City Council, Municipal Buildings, Dale Street, Liverpool, L2 2DH	T: 0151 233 -0807	Deprivationoflibertysafeguards@liverpool.gov.uk
KNOWSLEY	Vince Williams,	Safeguarding Adults Unit, 2nd Floor Nutgrove Villa, Westmorland Road, Huyton, Knowsley, Merseyside, L36 6GA	T: 0151 443-3544	knowsley.accessteam@knowsley.gov.uk
SEFTON	Jan Herrity	Sefton Council Magdalen House 30 Trinity Road, Bootle. L20 3NJ	T: 0151 934 -3109	dols@sefton.gov.uk
HALTON	Lindsay Smith	Halton Borough Council Contact Centre	511 7676	Lindsay.smith@halton.gov.uk
Warrington	Access to Social Care (ASC) Penny Davidson – Lead	Access Social Care 1ST Floor Newtown House Buttermarket Street Warrington WA1 2 NH	T 01925 444 239 (Out of hours 01925 444400) F: 01925 444201	servicereception@warrington.gov.uk
Wirral	Peter Ferguson		0151 606 2006	cadt@wirral.gov.uk
St Helens	Linda Wojcik	Forster House, Waterside, Pocket Nook, St Helens, WA9 1UB	01744 675303	

Appendix 1.

Deprivation of Liberty Safeguards – Timeliness of Authorisations

Escalation Process



NB: This process is also to be followed for Further Standard Authorisation Requests (submissions of Forms 2 to the Supervisory Body)