

**Includes
Audit Tool**

Deprivation of Liberty Information for Care Homes and Hospitals

2015



Sheffield **Adult**
Safeguarding Partnership

Deprivation of Liberty Safeguards

Information for Managing Authorities (Hospitals and Care Homes)

Update 2015

Including Audit Tool and Information for Families

Background

The Mental Capacity Act (MCA) 2005 provides a legal framework for assessing whether a person has mental capacity to make a specific decision(s). It also defines how others can make decisions on behalf of someone who lacks mental capacity, in their best interests.

Since April 2009, the Mental Capacity Act has allowed for the Deprivation of Liberty of people who lack capacity to consent to their care and treatment arrangements. This power is only available under the Deprivation of Liberty Safeguards if the person is in a care home or hospital.

Unauthorised Deprivation of Liberty in any setting is a breach of Article 5 of European Convention on Human Rights (right to Liberty and Security).

Deprivation of a persons liberty in another setting (e.g. supported living/own home) can only be authorised via the Court of Protection.

In March 2014 the law was clarified about who needs to be assessed for Deprivation of Liberty Safeguards, often referred to as **DoLS**.

This includes the following people who may be **paying for their own care or in receipt of public funds**, and is often referred to as the '**Acid Test**'

- Anyone being cared for in a care home, nursing home or hospital, who **lacks the capacity** to make their own decision about being looked after there
- Who is **not free to leave** and live somewhere else
- And who is **under continuous supervision and control**.
(The person does not need to be within staff members line of vision at all times.)

The Deprivation of Liberty Safeguards recognise that some patients/residents require care that involves a level of control and/or restriction that is in their best interests and amounts to a Deprivation of their Liberty.

If people are deprived of their liberty in your care home or hospital, it does not mean that you are a poor care provider and it should not be seen as a criticism.

Terminology

Managing Authority – Care Home or hospital where a person is likely to come under the Deprivation of Liberty Safeguards

Supervisory Body – The department within the Local Authority responsible for authorisations under the Deprivation of Liberty Safeguards.

In Sheffield the Supervisory Body is:

Sheffield City Council Mental Capacity Act Office

Floor 9 Moorfoot

Moorfoot Building

Sheffield S1 4PL

Tel: 0114 205 7183

Email: MCA@sheffield.gov.uk

Court of Protection – The Court of Protection looks at matters relating to people who lack capacity to make specific decisions.

Why use the Deprivation of Liberty Safeguards?

- It is a **legal requirement** for hospitals and care homes to use Deprivation of Liberty Safeguards where a person's care and treatment is provided in an environment that deprives them of their liberty.
- Deprivation of Liberty Safeguards may be the most appropriate legal means to detain someone and may be crucial to ensure they **receive care and treatment** necessary to **prevent harm**.
- Deprivation of Liberty Safeguards ensure that any restrictions or limitations on a person's freedom will be **monitored and if appropriate, challenged** via the Court of Protection.
- Hospitals and care homes using Deprivation of Liberty Safeguards will need to review and reassess their practices to ensure that they are the **least restrictive options**.
- Staff in hospitals and care homes can be **assured of legal protection** for the actions they take to detain a person provided they work in accordance with the Deprivation of Liberty Safeguards.

Consideration must always be given to the least restrictive options for delivering care and treatment.

Role of the Managing Authority

To be covered by the Deprivation of Liberty Safeguards legislation the person must lack capacity to decide whether or not they should be accommodated in the hospital or care home to be given care and treatment.

Assessing Capacity

You must comply with the principles of the Mental Capacity Act when undertaking a mental capacity assessment

In order to assess if the person lacks capacity to decide whether or not they should be accommodated in the hospital or care home to be given care and treatment, the following needs to be considered and recorded:

- Can the person **understand** the decision that needs to be made, and why it needs to be made? Can they foresee the likely implication of the decision?
- Can the person **retain** the information about the decision long enough to consider the options?
- Can they **weigh up** the information and consider the likely consequences including risks involved?
- Can they **communicate** their decision (via any method)?

If they cannot do **any one or more** of the above then the person lacks the capacity to make this decision at this time.

Recognising a Deprivation of Liberty

Managing Authorities must be able to recognise when a person who lacks capacity is being deprived of their liberty. The Supreme Court Judgement of March 2014 clarified what to look for to identify a Deprivation of Liberty. The ruling sets out the '**Acid Test**' (See page 3).

In addition The Managing Authority **must always** consult with the Supervisory body in the following circumstances:

- When there is a need to **restrict the access of family and/or friends** to the person
- The **placement is opposed by family and/or friends**
- **A request by family and/or friends to have the person discharged to their care has been denied**

What to do when you identify a Deprivation of Liberty

The hospital/care home (known as the **Managing Authority**) has responsibility to apply for authorisation of a Deprivation of Liberty.

If the Managing Authority is considering applying for authorisation of a Deprivation of Liberty they **must** consult the person, their family or friends. (See information to share with Families and Friends on page 15).

Once the Managing Authority has identified a Deprivation of Liberty, they can issue an **urgent authorisation** for 7 days which will cover them legally to take measures to keep the person safe. An urgent authorisation can't be given without a request to the Supervisory Body for a **standard authorisation**.

An application is made on combined **forms 1 & 4**.

If a deprivation of liberty is anticipated to be required within the next 21 days e.g. a planned stay or admission, a standard authorisation can be requested alone by completing form 4.

Forms can be accessed via the webpage:

<https://www.sheffield.gov.uk/caresupport/adult/adult-abuse/professionals/mcadols/deprivation-of-liberty/forms-letters.html>

or by contacting the MCA office on 0114 205 7183.

What happens after an application is made?

Sheffield City Council (known as the **Supervisory Body**) is responsible for considering requests for authorisations, commissioning the required assessments and where appropriate authorising the Deprivation of Liberty.

The Managing Authority (MA) is responsible for ensuring that it does not deprive a person of their liberty without authorisation. Where a request for an authorisation is not granted the MA must review the actual or proposed care arrangements to ensure that a Deprivation of Liberty is not allowed to either continue or commence.

The Supreme Court Judgement in March 2014 has triggered a significant increase in referrals for assessments. If your request for assessments goes out of timescale you should continue to act in the persons best interests and keep the Care Plan under review to ensure any care and or treatment is provided in the least restrictive way.

The Managing Authority must contact the Supervisory Body if the person's situation changes significantly.

The role of the Supervisory Body

The Supervisory Body will **appoint a Best Interest Assessor** and a **Mental Health Assessor** who will visit the person at the hospital or care home, talk to those caring for and supporting the person, including family members, and read the care notes.

If the person has no family or friends to consult with the Supervisory Body will appoint an Independent Mental Capacity Advocate (IMCA).

It is the **Best Interest Assessor's role** to:

- Establish that the person is over the age of 18.
- Establish that an authorisation to deprive the person of their liberty will not conflict with any existing decision making authority for the person eg an advanced decision to refuse treatment that is proposed, or conflict with a decision of a donee or deputy.
- Establish that the person lacks mental capacity to decide whether or not they should be accommodated in the hospital or care home to be given care and treatment.
- Establish if the circumstances amount to a deprivation of liberty, and if so is it in the persons best interests, necessary to prevent harm and a proportionate response to the likelihood and seriousness of the harm.

It is the **Mental Health Assessors Role** to:

- Establish that the person has a mental disorder.
- Establish that the person is eligible for detention under the Mental Capacity Act rather than the Mental Health Act.

If all the assessments conclude that the **person meets the requirements** the Supervisory Body will authorise the deprivation of liberty and set a timescale for the safeguards. This will be for the shortest period possible and cannot exceed 12 months.

If any one of the assessments concludes that the **person does not meet the requirements** the assessment process will cease and written confirmation of this will be sent by the Supervisory Body to the Managing Authority.

Role of the Relevant Persons Representative (RPR)

The Supervisory Body must appoint a Relevant Persons Representative for every standard authorisation given.

The role of the Relevant Persons Representative is to:

- Maintain contact with the person subject to the Deprivation of Liberty Safeguards
- Represent and support the person in all matters relating to the Deprivation of Liberty safeguards including compliance with conditions. (see page 10)
- Advise the person about their right of appeal via the Court of Protection and support them to challenge the arrangements.

This is a crucial role to provide the person with independent support. If the person does not have a friend or family member who is willing or able to fulfil this role the Supervisory Body will appoint a paid representative at no cost to the person, their family or the Managing Authority.

The person deprived of their liberty and their friend or family (Relevant Persons Representative) have a statutory right to the support of an Independent Mental Capacity Advocate (IMCA) appointed by the Supervisory Body free of charge.

Conditions

Where there is some doubt as to whether the Deprivation of Liberty is the least restrictive option and/or is in the person's best interests, the authorisation will set out conditions to reduce the restrictions.

These conditions, agreed between the Best Interest Assessor and the Supervisory Body, are **legally binding**. They can be appealed by the Managing Authority otherwise they must be acted upon.

Failure of the Managing Authority to act on a condition directed to them could result in safeguarding procedures being initiated.

When an authorisation ends

If the Managing Authority considers that a person continues to be Deprived of their Liberty at the end of the authorisation period, they will need to request a further authorisation to begin immediately after the authorisation ends by sending a new form 4 to the Supervisory Body.

A new authorisation can be requested up to **28 days** before the expiry date of the existing Standard Authorisation.

A request can be made to the Supervisory Body for a Review of the Standard Authorisation at any time.

The Managing Authority must request a review if it appears that one or more of the DOLS requirements is no longer met.

This request is made to the Supervisory Body on Form 19.

Mental Capacity Act/Deprivation of Liberty Safeguards Compliance Checklist/Audit Tool for Managing Authorities

Being familiar with the Mental Capacity Act (MCA) and using the Deprivation of Liberty Safeguards (DOLS) is key to protecting and promoting the Human Rights of people who lack capacity to make a decision about where they live, their care or treatment.

Use this check list/audit tool to help you work out if your organisation is working within the law.

Compliance with this legislation is monitored by the Care Quality Commission.

Do you?

- ☐ Display information and contact details for people and their families about DOLS?
- ☐ Ensure the DOLS Code of Practice is available for staff to consult?
- ☐ Have a MCA/DOLS Policy in place?
- ☐ Have a lead person identified for MCA/DOLS to oversee practice and compliance?
- ☐ Have an established system for staff training about the Mental Capacity Act and the DOL safeguards?
- ☐ Ensure staff know how and when to assess mental capacity and record a person's capacity regarding specific decisions?

- ☐ Ensure all care provided is the least restrictive option available?
- ☐ Review Care Plans at least monthly, or as and when required, evidencing least restrictive options are currently in place?
- ☐ Ensure staff know who to talk to, and what to do if they think a person MIGHT be deprived of their liberty?
- ☐ Check staff understand the process to make a referral for a DOLS assessment?
- ☐ Ensure that DOLS application forms contain relevant and comprehensive information?
- ☐ Have a system in place to quality assure DOLS applications?
- ☐ Always consult with the person, their family and friends, if you believe the person may be deprived of their liberty?
- ☐ Use the DOLS information sheet in this leaflet to assist before you send in the request for assessment?
- ☐ Always and accurately identify if the person does not have family or friends to enable the appointment of an IMCA by the Supervisory Body?
- ☐ Contact the Supervisory Body if your request for assessment goes out of timescale, to inform of any significant changes in the person's situation?
- ☐ Ensure the DOLS application forms and assessments form part of the person's care plan?

- ☐ Enable DOLS Assessors to have access to all records relating to the relevant person?
- ☐ Ensure any conditions attached to a standard authorisation, are part of, and clearly visible within the person's care plan?
- ☐ Keep a record of actions taken to meet conditions attached to a standard authorisation?
- ☐ Inform the Supervisory Body If conditions can't be met?
- ☐ Work with the person, their family and representative to understand what an authorisation means for that person, and ensure they are aware of their right to request a review at anytime?
- ☐ Make requests to the Supervisory Body for a Review if one or more of the requirements for DOLS are no longer met?
- ☐ Report DOLS authorisation outcomes to the Care Quality Commission?
- ☐ Keep a list of up to date information of current DOLS authorisations for audit purposes?

Notes

[illegible]



Information to Share with Family and Friends

This information explains why your family member or friend has been referred for an assessment under DOLS (Deprivation of Liberty Safeguards).

All UK citizens have their rights and freedoms protected by the Human Rights Act 1998. The Mental Capacity Act 2005 exists to protect the rights and freedoms of people who are not able to make their own decisions through illness or disability.

The Deprivation of Liberty Safeguards 2009 exist to protect the rights and freedoms of people who are covered by the Mental Capacity Act and who are being cared for in a hospital, care home or nursing home. We call these safeguards DOLS for simplicity. Since March 2014, the law has clarified who needs to be assessed for DOLS.

This includes the following people:

- Anyone being cared for in a care home, nursing home or hospital who is unable to give their consent or agreement to being looked after there
- Who is not able to leave that place and go and live somewhere else &
- Who is monitored regularly so that their whereabouts are known. The person does not have to be in staff members line of vision at all times.

We think that your relative meets the above criteria. We are therefore by law required to ask Sheffield City Council to send assessors to see your relative to decide if this is the case.

There will be two assessors who visit your family member or friend (Best Interest Assessor & Mental Health Assessor). The Best Interest Assessor will contact you to discuss this further and seek your views.

Please let the Hospital, Care Home or Nursing Home know if you want the assessor to speak to you first before they see your family member or friend.

There is likely to be a delay between the application being made and the assessor making contact with you. This is due to unprecedented demand following a change in the Law.

If you require further information about the Deprivation of Liberty Safeguards, you can contact the Mental Capacity Office on 0114 205 7183.

This document can be supplied in alternative formats, please contact 0114 273 6870

Sheffield City Council
Safeguarding Adults
www.sheffield.gov.uk



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