Supervisory Body Office
2nd Floor, The Charter
Abingdon, Oxfordshire, OX14 3LZ
Tel: 01235 547142
Fax: 01235 547161
Email: DoLS@oxfordshire.gov.uk

MENTAL CAPACITY ACT

DEPRIVATION OF LIBERTY SAFEGUARDS ('DoLS')

FREQUENTLY ASKED QUESTIONS

Q: Who is covered by the Mental Capacity Act Deprivation of Liberty Safeguards?
A: The MCA DoLS apply to **people in hospitals or registered care homes**, who meet **all** the following criteria. A person must:

- Be aged 18 or over;
- Have a mental disorder (as defined by the Mental Health Act) such as dementia, acquired brain injury or learning disability;
- Lack the capacity to consent to arrangements being proposed for their care and/or treatment; AND
- Need to be restricted to such a degree that this amounts to deprivation of liberty (in terms of the Human Rights Act) in their own best interests to protect them from harm.

Q: What is the difference between restriction of liberty in a person's best interests to prevent harm to him/her, which is lawful under ss.5 & 6 of the Mental Capacity Act, and deprivation of liberty which will need to be authorised?
A: The European Court of Human Rights (ECtHR) has said that this depends on the specific circumstances of each individual case. As a result, there is no single definition or simple checklist that will answer definitively whether a person is being deprived of their liberty. We have however developed a screening tool for use in Oxfordshire, which takes account of all case law to date, and this is attached at the end of this document.

Q: When should the MCA DoLS be used?
A: The MCA DoLS should be used for all adults in hospitals or care homes, who BOTH lack the capacity to make their own decisions about where to live or what treatment to accept; AND whose personal freedoms need to be restricted, in the patient's best interests, to the extent that the restrictions amount to a deprivation of liberty. The MCA DoLS should not, however, be used if a person meets the criteria for detention under the Mental Health Act (1983) and either is, or should be, detained under that Act.

Q: At what stage in care planning should DoLS be considered?
A: To restrict a fellow citizen so intensely that it might constitute deprivation of liberty is a serious matter, and not one to be undertaken lightly. In most cases therefore DoLS is a 'measure of last resort' when every effort has been made to care for a person in a less restrictive way. However a person's behaviour may change unpredictably and suddenly in a way that makes it impossible to care for him/her safely without deprivation of liberty: in such a circumstance, the Managing Authority must complete Form 1 to authorise up to 7 days' deprivation of liberty while a standard authorisation is sought, using Form 4.

Q: Can you demystify the jargon of the DoLS system?
A: Key terms used in the MCA DoLS legislation include:

- **Supervisory body**: this refers to PCTs (for people in hospitals) and local authorities (for people in registered care homes). Supervisory bodies have the responsibility for assessing and authorising (or not) Deprivation of Liberty requests. For Oxfordshire, the supervisory bodies are administered jointly, and contact details appear at the top of this document.
- **Managing authority**: this is the person or body with management responsibility for the hospital or care home in which a person is being, or may be, deprived of liberty. The Managing Authority has the responsibility for recognising that deprivation of liberty is occurring or is likely, and for requesting authorisation from the Supervisory Body.
- **Standard authorisation**: this permits lawful deprivation of liberty and is issued by a supervisory body (for a period not exceeding 12 months).
- **Urgent authorisation**: this permits lawful deprivation of liberty for a short period of time in an emergency, and is issued by a managing authority (for up to 7 days).
- **Relevant person**: this is the person who may need to be deprived of his/her liberty in his/her best interests.
- **Relevant Person's Representative (RPR)**: this is a person chosen and appointed to represent the interests of the relevant person. It is usually a family member or friend, but where there is nobody available within a person's network, a paid representative will be selected.
- **Best interests assessor (BIA)**: this is the assessor who decides whether or not deprivation of liberty is in the 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.
- **Advance decision to refuse treatment**: a person who has capacity can decide to refuse specified treatments if at a future time they lack capacity to consent to or refuse those specified treatments. Specific rules apply to advance decisions to refuse life-sustaining treatment.
- **Donee of LPA**: this is the person 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 who made the LPA. A person can, since 2007, make an LPA to cover welfare and health decisions: the donee may, therefore, have the power to consent to or refuse medical treatment including life-saving treatment.

- **Independent Mental Capacity Advocate ('IMCA')**: this is a person who provides support and representation for a person who lacks capacity to make specific decisions in certain defined circumstances. The IMCA service was established by the Mental Capacity Act, and is not the same as an ordinary advocacy service in that it is non-instructed advocacy and subject to law and regulation including DoLS.

Q: How does the process work to get authorisation?
A: The managing authority has the responsibility to identify actual or likely deprivation of liberty; if they cannot identify a less restrictive way to meet the person's needs for care or treatment, they must contact the supervisory body using the forms available to them.

The supervisory body will then commission 6 assessments (age, no refusals, eligibility, mental health, mental capacity and best interests) from a minimum of two assessors, one of whom is a doctor with special expertise in mental health who has undergone further specialist training to be a DoLS assessor, and the other of whom (the Best Interests Assessor or BIA) is an experienced nurse, occupational therapist, psychologist or social worker, who has also completed specialist DoLS training. If all assessments support deprivation of liberty as being proportionate to the risk of harm and the likelihood of that harm, and the Best Interests Assessor confirms that deprivation of liberty is in the person's best interests, authorisation will be granted by the supervisory body for a period.

Q: How long can an authorisation under DoLS last?
A: The maximum length of time for which deprivation of liberty in a person's best interests can be authorised is 12 months. It is likely, however that, in the spirit of seeking the 'least restrictive option' for meeting a person's care needs, as specified in the Mental Capacity Act, authorisation may be given for shorter periods of time, such as 3 or 6 months.

Q: Is there a renewal process for a DoLS authorisation?
A: No, it is not possible to renew a DoLS authorisation. When it is reaching its end date, the hospital or care home should decide whether it is necessary to request a new authorisation for this person.

Q: How do the MCA DoLS protect people?
A: The MCA DoLS introduce a standard process that hospitals and care homes must follow before they deprive a person of their liberty. If people do need to be deprived of their liberty in their own best interests, the MCA DoLS protect them by providing:

- A representative to act for them and protect their interests;
- Rights of challenge to the Court of Protection against unlawful deprivation of liberty;
- Rights for their deprivation of liberty to be reviewed and monitored on a regular basis.

Q: What is the role of the Relevant Person's Representative?
A: As soon as a standard authorisation has been granted, the supervisory body must appoint a relevant person's representative (RPR) to represent the person who has been deprived of their liberty.
The RPR is usually a family member or friend of the Relevant Person. If the person has no family member or friend who is able to fulfil the role (to stay in touch with the person, and visit at least fortnightly on average) then the Supervisory body must appoint a paid RPR.

Q: What is the role of the IMCA?
A: The relevant person and their representative have a right to be supported by an IMCA as part of the MCA DoLS process until the appointment of a Relevant Person's Representative. If the person has no family or friends to support them through the assessment process, the managing authority must tell the supervisory body and an IMCA must be appointed at once.
The person and the RPR also have a statutory right of access to an IMCA once a deprivation of liberty has been authorised. A relevant person with a paid representative has no such right since it is assumed that the paid representative would meet their advocacy support needs.
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Q: What is the role of the Court of Protection?
A: If a person, or their representative, does not agree with the decision to deprive them of their liberty, the new system gives them the right to appeal against the decision to the Court of Protection: this is to ensure compliance with the rulings of the European Court of Human Rights.

Q: How can I find out more about MCA Deprivation of Liberty Safeguards?
A: You can visit the Department of Health website at:
www.dh.gov.uk/en/socialcare/deliveringadultsocialcare/mentalcapacity/mentalcapacityact/deprivationoflibertysafeguards.index.htm

or you can contact the Government Implementation team in writing at:

MCA DoLS Implementation Programme
Department of Health
Wellington House, Room 124,
133-155 Waterloo Road
London SE1 8UG
Email: dols@dh.gsi.gov.uk

Or contact the Supervisory Body for Oxfordshire, contact details at the top of this document.

Rachel Griffiths
MCA & DoLS Lead for Oxfordshire, tel: 01235 547142
rachel.griffiths@oxfordshire.gov.uk

OXFORDSHIRE COUNTY COUNCIL
www.oxfordshire.gov.uk

NHS

DEPRIVATION OF LIBERTY – SCREENING CHECKLIST

The following questions should be considered about each person in a care home or hospital ward who does not have the capacity to give informed consent to being there. If it is OBVIOUS that the answer to every question is no, the person is unlikely to being deprived of their liberty.

How the person was admitted to the care home or hospital

1	**Were force or sedatives used because the person was resisting being admitted?** *This does not include the use of benign force, such as gently guiding someone by the arm.*	
2	**Was the person deceived to make sure they co-operated? For instance, were they misled into believing that they would return home the next day?**	
3	**Did the person's relatives, or carers who live with the person, object to them being admitted?**	

4	**Is the person sedated to prevent them leaving?** *Use of sedatives does not in itself mean that a person is deprived of liberty – it is only relevant if the purpose is to prevent the person from leaving the establishment.*	
5	**Does the person make PERSISTENT or PURPOSEFUL attempts to leave, which are prevented by means of force or a locked door? If immobile, does the person ask to leave in a PERSISTENT and PURPOSEFUL way?** *A locked door does not constitute deprivation on its own, even if its purpose is to prevent residents from wandering. Likewise for the use of benign force, such as gently guiding someone by the arm to return them when they are wandering. This test is met only if the person's attempts to leave are persistent and/or purposeful*	
6	**Is force being used to treat the person when they are resisting, other than in an emergency?** *Use of benign force to administer medication, or to feed or dress someone, does not deprive someone of liberty. Emergencies could include disturbed, threatening or self-harming behaviour.*	
7	**Have relatives or carers asked for the person to be discharged to their care, and been refused?**	

8	**Have the relatives or carers been refused access to the person, or had severe restrictions put on their access?** *Reasonable restrictions on visiting hours, etc, are not relevant.*	
9	**Has the person been prevented from spending time with the people who matter to them?** *This would, for instance, include preventing the person from spending time with friends inside or outside the home/ward. It would NOT include guiding the person away from casual acquaintances who appear to be abusing or exploiting the person, or reasonable restrictions on the times when the person can socialise with friends, for instance because of the pattern of the establishment's daily routine.*	
10	**Does the way the person's care is organised severely restrict what they can do in other ways?** *An example of severe restriction would be placing the person for a large proportion of their waking time in a position which prevents them from moving (eg using furniture which they cannot get up from). It would NOT be a severe restriction to use furniture designed to keep the person safe, which they cannot get up from unaided, it they are usually able to get help to get out of it when they show a persistent or purposeful desire to do so.*	
11	**Has the person's access to the community been severely restricted BECAUSE OF CONCERNS ABOUT PUBLIC SAFETY?** *It is not deprivation of liberty to require someone to be escorted on trips out of the care home/hospital, if this is in the interests of their own safety rather than that of others, even if this means that the person is sometimes* temporarily *not permitted to leave.*	

Completed by (name & signature): ……………………………………………….

Profession/role: ……………………………………………….

Date: ……………………………………………….