

Deprivation of Liberty Procedure for Managing Authorities (Care Home Edition)

Local Supervisory Body: Dudley MBC

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**To be read in conjunction with the Deprivation
of Liberty Safeguards Code of Practice**

Deprivation of Liberty Safeguards (*DOLS*)

A Procedure for Managing Authorities

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Introduction

Deprivation of Liberty Safeguards (DOLS) is the process by which someone who does not have the mental capacity to agree to arrangements for their accommodation, treatment and care can be deprived of their liberty for their own health and safety, in their best interest and where it is the least restrictive alternative.

Managing authorities (Registered Care Homes or Hospitals) need authorisation from Supervisory Bodies (Primary Care Trusts (PCTs) and Local Authorities) because depriving someone of their liberty is illegal without such authorisation.

This procedure covers the role of Care Homes and their staff. It covers what staff should know, admission, application for authorisation, urgent authorisation and review. More detailed information is available in the DOLS Code of Practice. The Code of Practice has been made available to all care homes within Dudley Borough.

Identifying the Managing Authority and Supervisory Body

Managing Authorities and Supervisory Bodies carry out the important roles under Deprivation of Liberty Safeguards.

In a registered care home the "Managing Authority" is the person registered under part 2 of the Care Standards Act 2000 in respect of the care home.

The Supervisory Body will be the local authority for the area in which the relevant person is ordinary resident. They may be arranging, paying for, or contributing to the resident's care or the person may be self-funding. If the person was of no fixed abode before admission or the manager of the home cannot ascertain where they normally lived, they should send the application for authorisation to the local authority in which the home is located.

Staff Awareness

The Managing Authority has a responsibility to ensure that all staff have an understanding of the Mental Capacity Act and Deprivation of Liberty Safeguards. In most cases this will require an understanding of how to assess capacity and to make a decision in a person's best interests and what the act says about the use of restraint.

All staff need to understand what it means when a relevant person has been authorised for Deprivation of Liberty. This is important because authorisation may carry conditions and if staff do not satisfy these conditions their actions and the further deprivation of liberty will not be legally covered.

The managing authority will ensure that staff can access advice and information about the Mental Capacity Act and the Deprivation of Liberty Safeguards. The Managing Authority will ensure that all staff have an understanding of the Mental Capacity Act and Deprivation of Liberty Safeguards.

Admission

When a resident is referred to the home, the receiving manager should ensure that the referrer identifies any possibility that there may be a need for a Deprivation of Liberty authorisation. This authorisation should be applied for 28 days before the deprivation of liberty is due to start.

When the admission is being arranged by a local social services department or an NHS organisation, they should inform you of this well before admission is due to take place, however, when a placement is arranged by family or others it is likely that the home manager will have to raise the issue.

The manager should ensure that the potential resident has had their mental capacity to agree to residing at the home assessed. If they lack capacity to consent to the admission then the manager should ask the referrer for information about the following:

- Does the resident have anyone with Lasting Power of Attorney (LPA)?
- If so, is the LPA for Health and Personal Welfare issues?
- Does the person have a deputy appointed by the Court of Protection?
- If so, is the Deputy empowered for Health and Personal Welfare issues?
- Has the person made any Advance Decisions to Refuse Medical Treatment, which apply to anything that may happen while they are in the home?

- Does the referrer know of any wishes and feelings expressed by the relevant person which relate to their care? (These are sometimes called advance statements).
- Do they have a list of people who should be consulted when a major decision is being made?

The referrer and the manager should agree on the care plan to be followed after admission and the manager should assess whether the plan might represent a Deprivation of Liberty and an assessment by the Supervisory Body be necessary.

If a pre-admission assessment does not indicate a deprivation of liberty authorisation is necessary but circumstances change on admission then follow the urgent authorisation procedure on page 7.

How to identify if authorisation is needed

The manager should ensure that all residents are assessed for a need for authorisation. This will normally be before the person is admitted but sometimes will be post-admission. Sometimes a person may be admitted with no need for authorisation but because of changes in their condition the need develops over time. The manager should recognise this before deprivation is actually necessary and apply to the supervisory body for authorisation.

It is not necessary for the manager to be sure that deprivation will take place - that decision will be made during assessment. If the manager believes that the arrangements for care MIGHT represent deprivation of liberty, they must apply for authorisation.

Points which **might** indicate Deprivation of Liberty include:

- Restraint or sedation on admission where the resident resists
- Complete control over care and movement of the person
- A decision has been made that the person will not be released to the care of other people
- There has been a refusal to let the person live with a relative
- The person's social contacts are determined for them, e.g. they are not allowed contact with particular people including relatives.
- Ongoing restraint or sedation required.
- The person receives sedative medication for which they do not have capacity to consent.
- The person is restricted to a small part of the home
- The person receives high level of observation
- The person seems to be trying to leave

The balance of these issues and others will determine deprivation of Liberty. If none of these apply to the case, then it is unlikely that there is a deprivation of liberty. It is a requirement that where a deprivation of liberty is authorised it **must** be the least restrictive option that is proportionate to the need to prevent harm and is in the relevant person's best interest.

The flowchart on page 12 provides a guide to the questions that the manager should

address when deciding whether to apply.

Referral for authorisation

To apply for authorisation the managing authority or delegated staff member must fill in Form No. 4 Request for a Standard Authorisation (The form is 11 pages long but should not take long to fill in, as many parts require ticks rather than text. It is vital that the whole form is completed or the assessment will be delayed or prolonged.) Copies of this have been sent to all care homes within Dudley. The form should be sent to the Supervisory Body for the resident or potential resident. **For Dudley Borough cases use safe haven protocol by telephoning 01384 364017 before faxing to 01384 244915.**

IMCA

An IMCA is an Independent Mental Capacity Advocate. Whenever someone who lacks mental capacity to consent to arrangements for their accommodation has no family or unpaid carers, it is necessary that an IMCA be involved to oversee the decision-making process. When applying for authorisation, the managing authority must inform the Supervisory Body if an IMCA is or should be involved.

The Relevant Person's Representative may also have a right to access an IMCA.

Who is the Supervisory Body?

The supervisory body will be the Local Social Services Authority (LSSA) arranging, paying for, or contributing to the relevant person's care.

- Where the relevant person is of no fixed abode it will be the LSSA where the care home is sited (local LSSA)
- Where the relevant person is self/privately funded it will be the local LSSA
- Where the care home cannot ascertain where they normally lived, they should send the application for authorisation to the local LSSA.
- Where the relevant person's care is paid for by health, the supervisory body will be the LSSA associated with that health authority i.e. where Dudley PCT pays, the supervisory body would be Dudley LSSA. If Sandwell PCT are paying, the supervisory body would be Sandwell LSSA

It is important that the care home has a record of which LSSA is paying for the relevant person's care to ensure that an authorisation request is sent to the appropriate supervisory body.

Assessment

The Supervisory Body carries out or arranges the assessment and the role of the Managing Authority is to facilitate the assessments. The assessment is in 6 parts, (see flowchart on Page 13) and must be completed within 21 days, for a standard authorisation.

Members of staff will cooperate with the assessment of residents for authorisation of Deprivation of Liberty. The assessment is vital to protecting the rights of residents

and staff members should do all they can to facilitate the process.

The assessors will need to see information held about the resident to help them come to a decision. This information might include:

- Evidence of age
- Information about their daily care and treatment
- Care plans and risk assessments.
- Information about illnesses
- Contact information for family and others
- Forms relating to legal issues, such as the Mental Health Act
- Evidence to show that deprivation is the least restrictive option
- Any information regarding mental capacity such as:
 - Any notes about what the resident may have said about wishes, views and feelings
 - Any information about people with lasting power of attorney for the resident
 - Any advance decisions to refuse medical treatment the resident may have on their file.
- Other information they consider relevant.

It is possible that an assessment may take place outside normal working hours and staff on duty should be aware of this.

The assessment will involve visits from a Best Interest Assessor and a Mental Health Assessor. These may take place at the same time or they may visit separately.

During an assessment, however, staff still have a duty of care to the resident. They should raise concerns with the assessor if they sense the resident being assessed, whom they know better than the assessor, is becoming distressed.

The time from the point at which the Supervisory Body accepts the referral to the issuing of a standard authorisation should not be more than 21 days.

When the Managing Authority has granted an urgent authorisation, the assessment has to be completed within 7 days. Under special circumstances the Supervisory Body can extend this by a further 7 days

Authorisation (standard)

To apply for a standard authorisation the managing authority or delegated staff member must fill in Form No. 4 - Request for a Standard Authorisation.

It is vital that the whole form is completed or the assessment will be delayed or prolonged. The form should be sent to the Supervisory Body for the relevant person or potential relevant person.

The Assessors will submit their reports to the Supervisory Body and an authorisation will be issued. Authorisation can be given for any period up to 1 year. In unstable situations it is likely that the period will be considerably less than one year.

The authorisation is an important legal document and must be filed in the

appropriate place within the relevant person's record. The authorisation might include conditions to which the managing authority and all staff must adhere to make the Deprivation of Liberty legal. When an authorisation is received, all staff that will have contact with the relevant person must be informed and instructed in any conditions which apply.

This briefing process will be recorded within the relevant person's record. Failure to record this could cause problems in the future should any member of staff fail to follow the conditions, so all staff members should be asked to sign the record to provide evidence that the briefing has taken place.

Review

The Managing Authority has a duty to review whether or not a Deprivation of Liberty Authorisation is still required.

There are three circumstances under which this should be done:

- When there are any changes in a relevant person's condition or arrangements which may indicate a change in their need for deprivation of liberty or
- when a period of authorised deprivation is coming to an end or
- if the managing authority is not certain about the need for continued deprivation of liberty

As soon as the managing authority thinks that they can look after the relevant person safely without the need to deprive them of their liberty, they should do so immediately.

A request for a review should be made to the Supervisory Body using form No. 19.

Note: The Supervisory Body may also review the relevant person if requested to do so by any eligible person.

Urgent Authorisation

There will be occasions when it is discovered that a person who is already admitted is living under circumstances, which may indicate that they are being deprived of their liberty without a valid authorisation. As soon as this is suspected it is the legal duty of the person who is delegated as the Managing Authority to grant themselves an Urgent Authorisation. If there is no authorisation the deprivation would be illegal and the Managing Authority would be liable to prosecution. It is essential therefore that action is taken the instant that deprivation of liberty is suspected.

To grant an Urgent Authorisation the managing authority must

- fill in the first 5 pages of Form 1 (request for an urgent authorisation) and also
- complete Form 4 (request for a standard authorisation)
- **both** forms must be sent/taken immediately to the Supervisory body.

If the delegated Managing Authority is not available to sign the form it can be filled in on their behalf. There should be a written record of all the members of staff to whom the Managing Authority has delegated this duty.

The Urgent Authorisation lasts for 7 days. Day one starts the day the authorisation is signed and dated. The Supervisory Body may extend this by a further 7 days in exceptional circumstances.

Relevant person

The managing authority has a legal duty to:

- involve the relevant person in every aspect of their care and treatment in accordance with the MCA.
- inform the relevant person if they intend to make a request for an authorisation
- inform the relevant person when an authorisation has been granted or
- give information on deprivation of liberty safeguards to the relevant person
- explain their rights under DOLS, orally and in writing – as per Representative below

The Supervisory Body has a legal duty to:

- give the relevant person a copy of the standard authorisation or
- a copy of the refusal.
- appoint the relevant person's representative and an IMCA

Representatives (relevant person's)

The Supervisory Body will appoint a representative for every person subject to a Deprivation of Liberty authorisation. This person will be independent of the commissioners and providers of their service.

The managing authority must, as soon as possible after authorisation, ensure that the relevant person and their representative understand:

- the effect of the authorisation
- their right to request a review
- the formal and informal complaints procedures available to them
- their right to apply to the Court of Protection to seek variation or termination of the authorisation
- their right to an IMCA if the representative is not a paid professional representative.

There should be a supply of the Rights leaflet and staff should give one to the relevant person, their representative and any other family/carers who are actively involved with the relevant person.

The managing authority should inform the representative of any sources of relevant information and support.

The managing authority will keep a record of the amount of contact between the representative and relevant person. If there is not enough contact between the representative and the relevant person, the managing authority should inform the Supervisory Body.

The managing authority should involve the representative when reviewing the care of the relevant person.

Monitoring and audit

The managing authority must keep a record of all authorisation requests and related information, statistics and details.

The Care Quality Commission will be responsible for inspecting all managing authorities and supervisory bodies.

The Department of Health will require statistical/data information of all authorisation requests.

If Authorisation is not given?

As soon as the assessors decide that authorisation is not appropriate, the assessments will end.

If authorisation is not given because it is judged that no deprivation of liberty is, or will be, taking place, the current arrangements may continue.

If the reason is that although deprivation of liberty is happening, one or more of the criteria are not met, action will have to be taken immediately to make the care plan legal. The action needed will depend on the circumstances and the reason the authorisation was refused.

Assessment failed	Action
Age	If the relevant person is less than 17 years and 11 months old, Deprivation of Liberty cannot be authorised. The Best Interest Assessor and Managing Authority and other people involved will need to decide what actions are most appropriate. Consideration should be given to changing the regime so that authorisation is not necessary. Consideration should be given to use of The Children Act 1989 or Mental Health Act 1983 to provide a framework for provision of services.
Mental Health	If the relevant person is found not to have a Mental Disorder there is a range of possible effects. Clearly the Mental Health Act will not provide an alternative to DOLS. The most likely option is to alter the care plan so that no deprivation of liberty takes place.
Mental Capacity	If the relevant person is found to have mental capacity to decide on their accommodation or treatment/care regime, DOLS cannot be used. Consideration may be given to using the mental health act 1983 or the care plan should be adjusted so that no deprivation of liberty is taking place. The relevant person should be supported to make decisions for themselves.
Eligibility	A person may be found not to be eligible for 2 reasons. If they are already under a section of the Mental Health Act, then the powers of the MHA should be used rather than DOLS. If the person is found to be more appropriate for the Mental Health Act, the assessment should take place without delay.

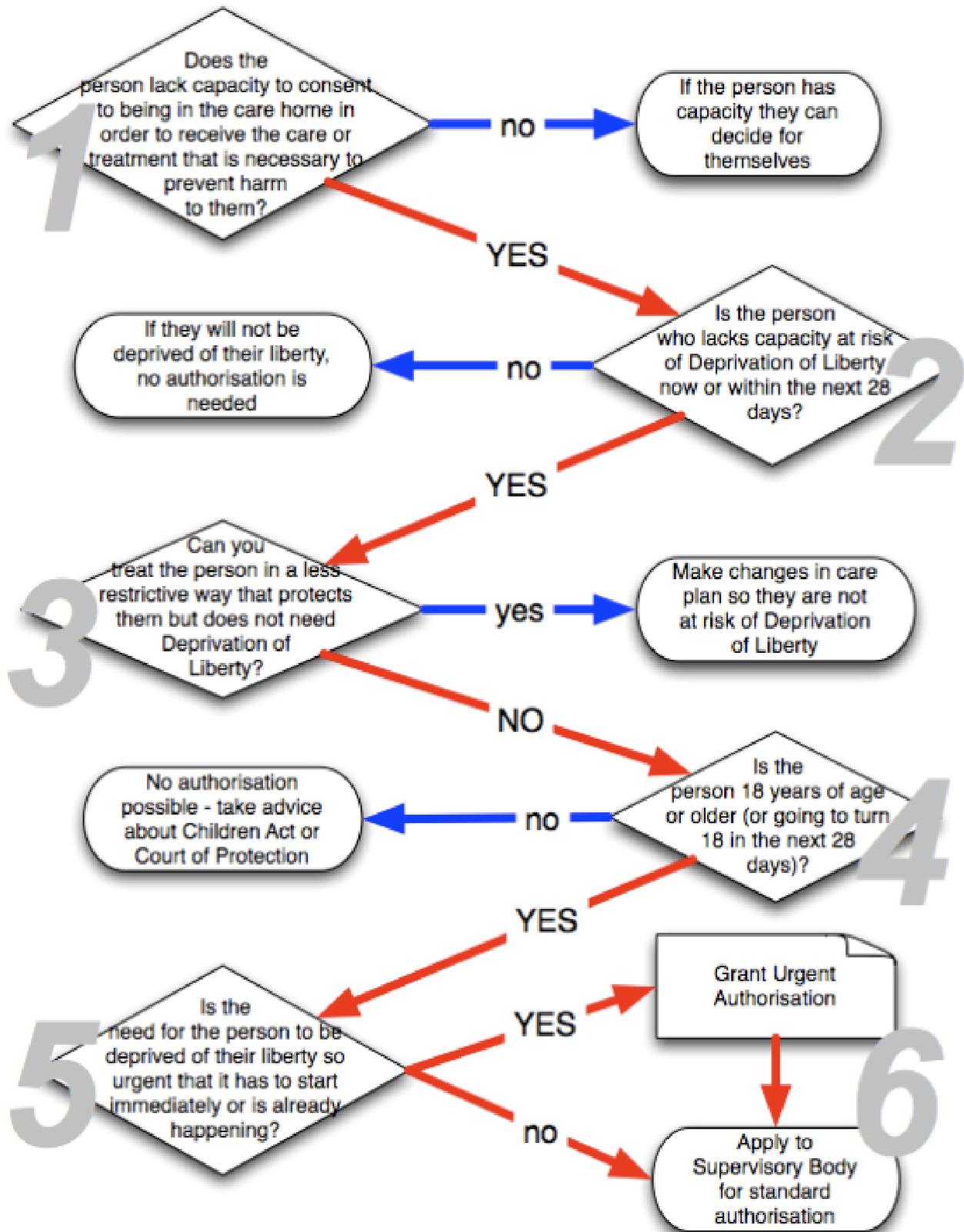
No Refusals	<p>If there is someone with power to make decisions on behalf of the relevant person, they should make the decision and no authorisation would then be necessary. If it were felt that the attorney or deputy was not acting in the relevant person's best interests, this should be raised with the Office of the Public Guardian or Court of Protection or be treated as a safeguarding issue.</p> <p>If the relevant person had made an Advance Decision refusing an important element of the treatment that the deprivation of liberty was intended to deliver, no authorisation would be possible and the refused treatment could not be given.</p> <p>If possible, the care plan should be altered. Use of the Mental Health Act may be considered</p>
Best Interests	<p>If all the criteria for authorisation are met but the BIA feels that authorisation would not be in the relevant person's best interests, there is no alternative to changing the care plan so no deprivation of liberty takes place.</p>

Glossary of Terms

Term	Meaning
AMHP - (Approved mental health professional)	A qualified professional who is either a social worker, nurse (in mental health or learning disability), occupational therapist or clinical psychologist, with additional training to be 'approved'.
Best Interests Assessor	The person who carries out the Best Interests Assessment (and up to 4 others). A professional, not a doctor, with special experience and training.
Care Quality Commission	New inspection body comprised of Commission for Social Care Inspection (CSCI), Health Care Commission (HCC) and the Mental Health Act Commission (MHAC), operational April 2009.
DOLS	Deprivation of Liberty Safeguards
Eligible Person	Someone who can require the Supervisory Body to carry out a review: The relevant person, their representative or the managing authority. This can also be a third party, but they should approach the managing authority in the first instance.
IMCA	Independent Mental Capacity Advocate

Term	Meaning
Manager	The person designated, within the managing authority, as responsible for deciding whether a relevant person may be or actually is being deprived of their liberty.
Managing Authority	The person registered under part 2 of the Care Standards Act 2000 who is responsible for applying for authorisation under DOLS. This role can be delegated and in many cases will be the manager of the care home.
MCA	Mental Capacity Act
Mental Health Assessor	The person who carries out the Mental Health Assessment (and possible up to 2 others). A doctor with expertise in mental health.
PCT	Primary Care Trust
Referrer	The person or organisation requesting admission to your hospital
Relevant Person	A person, such as the resident, service user or patient, who is subject to assessment and authorisation under DOLS
Representative	A person appointed by the Supervisory Body to support and represent the relevant person.
Resident	The term used in the Act to mean a person resident or planned to be resident in a care home. Sometimes referred to as the service user, resident or client.
Section 12 (s12) doctor	A doctor approved to assess mental disorder under the Mental Health Act.

Referral for Authorisation of Deprivation of Liberty



The Assessment Process

