

**Deprivation of Liberty Safeguards (DoLS and Mental Capacity Act) Policy**

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**Equality Impact**

Great Western Hospitals NHS Foundation Trust strives to ensure equality of opportunity for all service users, local people and the workforce. As an employer and a provider of health care, the Trust aims to ensure that none are placed at a disadvantage as a result of its policies and procedures. This document has therefore been equality impact assessed in line with current legislation to ensure fairness and consistency for all those covered by it regardless of their individuality. This means all our services are accessible, appropriate and sensitive to the needs of the individual.

**Special Cases**

Children under 18 years of age. - Most of the Mental Capacity Act (MCA) (2005) applies to people aged 16 years and over. There is an overlap with the Children Act 1989. For the MCA (2005) to apply to a young person (16-17 years old), they must lack capacity to make a particular decision (in line with the MCA (2005)’s definition of lack of capacity). In such situations either this Act or the Children Act 1989 may apply, depending upon the particular circumstances.

However, there may also be situations where neither the MCA (2005) or the Children Act 1989 provides an appropriate solution. In such cases, it may be necessary to look to the powers available under the Mental Health Act 1983 or the High Court’s inherent powers to deal with cases involving young people.



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# Instant Information - Application for Deprivation of Liberty Safeguards (DOLS) Check List

**Mental Capacity Act 2005 - Guidance on criteria for application for DOLS can be found overleaf**

***(Please Print)***

Patient’s Name:………………………………………………………………………………..

**Ward/Dept:………………………………………. Hospital No:…………………………**

**Date of Application:………………….. Time of Application:……………......................**

|  |  |  |  |
| --- | --- | --- | --- |
| **1.** | **Do you have the correct form for the Application:**  **First application: Form 1 Urgent and Standard Authorisation (7 days for urgent authorisation)**  **Exemplar A:** Not Medically Fit  **Exemplar B:** Delayed Discharge | Yes | No |
| **2.** | **Have you completed a two stage Mental Capacity Assessment?** | Yes | No |
| **3.** | **Have you completed a Best Interest Decision Record?**  If the patient is un-befriended consider referral to IMCA service. | Yes | No |
| **4.** | **Have you discussed application and given information leaflets to:**  **a) patient**  **b) patient’s family/significant others** | Yes  Yes | No  No |
| **5.** | **Are the papers signed and dated?** | Yes | No |
| **6.** | **Have you printed out care plan and relevant background information** | Yes | No |
| **7.**  **8.** | **Have you contacted the relevant Supervisory Body to inform them you are**  **Emailing/faxing application papers and care plan/information? (email preferred)**  **Have you logged application in Medway clinical note on the electronic whiteboard. Enter date and time of application. Remember to update i.e. extension date.** | Yes  Yes | No  No |
| **Which Supervisory Body to contact?** Check the address of the patient and contact the following service:   |  |  |  |  | | --- | --- | --- | --- | | Deprivation of Liberty Safeguards in South West SERVICE DETAILS | | | | | AREA | TELEPHONE | FAX | EMAIL | | SWINDON  **GWH secure email to swindon.gov.uk**  **(email preferred)** | Tel: 01793 463239 | **(email preferred)**  Fax: 01793 465866 | Julie Dart  [jdart@swindon.gov.uk](mailto:jdart@swindon.gov.uk)  Julia Keates  [jkeates@swindon.gov.uk](mailto:jkeates@swindon.gov.uk)  Jo Williams  [jwilliams8@swindon.gov.uk](mailto:jwilliams8@swindon.gov.uk) | | WILTSHIRE  **(email preferred)** | Tel: 01225 756598 | **(email preferred)**  Fax: 01225 718274 | [dols@wiltshire.gov.uk](mailto:dols@wiltshire.gov.uk) | | WEST BERKSHIRE | Tel: 01635 519056 | Fax: 01635 519939 |  | | BATH & NE SOMERSET | Tel: 01225 396187 | Fax: 01225 831326 |  | | GLOUCESTERSHIRE | Tel: 01452 426005 | Fax: 01452 427359 |  | | OXFORDSHIRE | Tel: 01865 328064 | Fax: 0845 641 6416 |  | | | | |
| **9.** | **Please indicate the Supervisory Body you have faxed/emailed the application to:**  **Swindon Wiltshire Other (Please Specify) ……………………..** | **(email preferred)** | |
| **10.** | **Have the Supervisory Body confirmed receipt of application papers?**  ***YOU WILL RECEIVE WRITTEN ACKNOWLEDGEMENT FROM SUPERVISORY BODY*** | Yes | No |
| **11.** | **Have you emailed the application papers to the Mental Health Act and Safeguarding Adults Team email:** [safeguardingadultsteam@gwh.nhs.uk](mailto:safeguardingadultsteam@gwh.nhs.uk) (displays as Safeguarding Adults Team on internal recipients)  **Fax: 01793 605197** **Tel: 01793 607345 / 604538** | Yes | No |
| **12.** | **Have you emailed your Safeguarding Lead to inform them of the application?** | Yes | No |
| **13.** | **Have you contacted the Site Manager to inform them of the application?**  **If you have answered NO to any of the questions please state the reason why.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | Yes | No |
| **14.** | **The Urgent Authorisation will expire at the end of the day on:**  *7 days from the date of the application (include the date of the application as day 1)*  ***Inform the Supervisory Body by Day 6 the urgent is due to expire*.**  Complete an IR1 selecting **cause 1:** DoLS lapse seven days then **cause 2:** Vulnerable Patient. | **IR1 No.** |  |
| **15.** | **EXTENSION TO URGENT AUTHORISATION:**  **Date Extension to Urgent Authorisation made to Supervisory Body:** |  |  |
| **16.** | **The Extension to the Urgent Authorisation will expire at the end of day on:**  *7 days from the date when the urgent extension application was made (include day 7)*  ***Inform the Supervisory Body by Day 14 the urgent extension is due to expire.*** |  |  |

**LAPSE OF EXTENSION TO URGENT AUTHORISATION:** the patient continues to be potentially deprived of their liberty in their best interests but the statutory assessment process for the standard authorisation has not taken place.

* Ensure least restrictive option for patient is in place.
* Ensure an update to date 2 stage mental capacity assessment is in place.
* Ensure an update best interest record is in place.
* Ensure the patient’s care plan has been updated accordingly.

If the patient’s condition changes, please contact the Supervisory Body to address priority of patient assessment.

**DEATH UNDER A DOLS:** When a patient dies whilst under an Urgent Authorisation, an Extension to Urgent Authorisation or a if a Standard Authorisation is in place. **A death under a DOLS is to be reported to the Coroner’s Office. The Mortuary need to be informed of the DOLS** by indicating on the ‘Notice of Death Document’ that the patient’s death was whilst under a DOLS.

**Signed……………………………………………..Date…………………Time.......……**

**Print Name: ………………………………………..**

**When completed, this form MUST be emailed with the DOLS application papers to the Safeguarding Adults Team** [safeguardingadultsteam@gwh.nhs.uk](mailto:safeguardingadultsteam@gwh.nhs.uk) **Fax Number: 01793 605197**

**Tel: 01793 607345 / 604538**

|  |  |
| --- | --- |
| **Guidance on criteria for application for Deprivation of Liberty Safeguards (DOLS)**  **The Mental Capacity Act 2005 Deprivation of Liberty Safeguards (MCA DOLS)** introduced in 2009 a legal framework to prevent unlawful deprivation of liberty by protecting people aged 18 and over who lack capacity to make decisions about staying in hospital for care and treatment when they may need to be cared for in a particularly restrictive way. This may apply for example, when a patient experiences dementia, a stroke, a learning disability or delirium that affects their ability to make particular decisions. The Deprivation of Liberty Safeguards set out a standard process that hospitals and care homes should follow if they think it will be necessary to deprive a person of their liberty for the purpose of giving care or treatment.  **The legal thresholds for considering if a patient who is not capacitated re their care and treatment may be being deprived of their liberty is now as follows:** | |
| **Is the patient subject to continuous supervision and control?**  *This has not been clearly defined by the Supreme Court and could be as low as the care and support required to meet the needs of the patient and keep them safe whilst in our care. This could include hourly checks, 1:1 support on a continuous or intermittent basis and the supervision of mobility/care tasks* | **Is the patient free to leave?**  *This should not be assessed solely by whether a patient maybe actively seeking to leave or objecting to the stay but applies equally if the patient is fully compliant with care, treatment and restrictions. The test of whether an application be considered is to* *be based on the action the staff would need to take in order to prevent harm towards the patient should they try to leave. If this action would be to prevent them (in their best interests) from leaving to safeguard them from harm an application should be made.* |
| **All care plans developed for patients who lack capacity re their care and treatment should be written following a best interest process and be of the least restrictive nature to a patient’s autonomy and freedoms.** | |

# Introduction and Purpose of the Document

The Mental Capacity Act Deprivation of Liberty Safeguards (MCA DOLS) provides legal protection for vulnerable people who may be deprived of their liberty within the meaning of Article 5 of the European Convention on Human Rights Act 1998 (ECHR) (Ref 7) in a hospital (other than under the Mental Health Act 1983 Ref 11) or care home, whether placed there under public or private arrangements. The European Convention for the protection of Human Rights and Fundamental Freedoms. The substantive rights it guarantees are largely incorporated into United Kingdom (UK) law by the Human Rights Act 1998 (Ref 6).

They were introduced following the legal judgment given by the European Court of Human Rights (ECHR) in the case of HL v United Kingdom (commonly referred to as the bournewood judgment). This case concerned an autistic man (HL) with a learning disability who lacked the capacity to decide whether he should be admitted to hospital for treatment. He was admitted to hospital on an informal basis under common law but was prevented from leaving the hospital with his carers. This decision was challenged by HL’s carers and the ECHR found that there had been a breach of HL’s rights under the European Convention on Human Rights (ECHR). The reasons given by the ECHR were that:

* HL had been deprived of his liberty and the deprivation of liberty had not been in accordance with ‘a procedure prescribed by law’ and was, therefore, in breach of Article 5(1) of the ECHR
* There had been a contravention of Article 5(4) of the ECHR because HL had no means of applying quickly to a court to see if the deprivation of liberty was lawful.

The MCA DOLS were introduced to prevent further breaches of the ECHR, and to ensure that deprivation of liberty can only take place when it is supported by a legal framework is in the best interests of the person concerned and authorised by a Supervisory Body. The MCA DOLS also give legal protection to the relevant person, including the right to:

* Request a review of their restriction of being deprived of their liberty
* An independent representative to act on their behalf
* The support of an Independent Mental Capacity Advocate (IMCA)
* Have their deprivation of liberty reviewed and monitored on a regular basis by the Managing Authority
* Challenge their deprivation of liberty in the Court of Protection.

Following a number of Court of Protection cases where what constituted a deprivation of liberty lacked clarity, in March 2014 the Supreme Court Judgement (Ref 9) clarified that there is a deprivation of liberty for the purposes of Article 5 of the European Convention on Human Rights when**: “The person is under continuous supervision and control and is not free to leave and the person lacks capacity to consent to these arrangements.”** This judgment sets aside factors relating to compliance, objection and normality and its intention was to extend the safeguard of the independent scrutiny and access to representation located in the current Deprivation of Liberty Safeguards process: “a gilded cage is still a cage.” This ruling is commonly referred to as the “acid test”

The Supreme Court Judgement case law also extend the acid test requirements to a deprivation of liberty occurring in other settings where the state is responsible for such arrangements and will therefore include a range of formal and informal supported living arrangements that are not presently eligible for assessment under Deprivation of Liberty Safeguards and would require application to the Court of Protection; this is similarly the case for 16 -17 year olds.

This policy is designed to clearly outline the key responsibilities and procedures related to the Deprivation of Liberty Safeguards and the process that the hospital employees must follow if it is deemed necessary to deprive a person of their liberty for the purpose of giving care or treatment.

This policy is a working document that will be reviewed and amended on a continuing basis to reflect changes in legislation, case law and any changes in arrangements with our working partners.

## Glossary/Definitions

The following terms and acronyms are used within the document:

|  |  |
| --- | --- |
| **Advance Decision** | This is a decision to refuse specified treatment made in advance by a person who has capacity to do so. If it is still considered valid and applicable, 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. |
| **Best Interests** | Any decisions made, or anything done for a person who lacks capacity to make specific decisions, must be in the person’s best interest. There are standard minimum steps to follow when working out someone’s best interest. |
| **Best Interests Assessor (BIA)** | This is the person, appointed by the Supervisory Body, who assesses 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. |
| **Court of Protection** | The specialist court for all issues relating to people who lacks capacity to make specific decisions. |
| **CQC** | Care Quality Commission |
| **DOLS** | Deprivation of Liberty Safeguards |
| **Donee of Lasting Power of Attorney (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 (the donor) who made the lasting power of attorney.  **Type of Power of Attorney**  There are three different types of power of attorney:   * Personal Welfare Lasting Power of Attorney (LPA)   Having an LPA over someone’s personal welfare may mean the attorney can make decisions about the healthcare and welfare of the person you are looking after. There may be one or more people with this responsibility, who will each be referred to as the person’s attorney.   * Property and Affairs LPA * EPA deals only with Property and Affairs   It is no longer possible to create an EPA as they were made under a previous law, Enduring Powers of Attorney Act, 1985 (Ref 8) before the Mental Capacity Act 2005 came into effect in this area. An EPA made before October 1 2007 remains valid.  Both EPAs and LPAs must be registered with the Office of the Public Guardian. LPAs can be registered at any time. Donors can register LPAs while they are able to make decision for themselves. |
| **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.  European Convention on Human Rights Act 1998 |
| **GWH** | Great Western Hospital |
| **IMCA** | Independent Mental Capacity Advocate |
| **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 was established by the Mental Capacity Act and is not the same as an ordinary advocacy service. When a DoLS referral is made and there are no family to consult, a DoLS IMCA will be appointed by the Supervisory Body. |
| **Managing Authority** | 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 is this policy is Great Western Hospitals NHS Foundation Trust. |
| **MCA** (2005) | Mental Capacity Act 2005 |
| **Mental Health Assessor** | This is the doctor, usually a psychiatrist, appointed by the Supervisory Body who will meet with the person to assess whether they are experiencing a “mental disorder” and whether they are eligible for the use of DoLS e.g. the person does not need assessing under Mental Health Act. |
| **MHA** | Mental Health Act |
| **Relevant Person (RP)** | This is the person who needs to be deprived of liberty. |
| **Relevant Person’s Representative (RPR)** | This is the person who represents the relevant person e.g. a friend or family member or an IMCA / other advocate as a paid RPR. |
| **Restraint** | The use or threat of force to enforce an act which the person resists; the restriction of the person’s liberty of movement, whether or not they resist. Restraint may only be used where it is necessary to protect the person from harm and is proportionate to the risk of harm. |
| **Standard Authorisation** | An authorisation given by the Supervisory Body after completion of the statutory assessment process, giving lawful authority to deprive a relevant person of their liberty in hospital. A Standard Authorisation can be authorised for up to 12 months. |
| **Supervisory Body** | Local authorities which are responsible for considering a deprivation of liberty request, commissioning the assessments and where all the assessments agree, authorising deprivation of liberty |
| **UK** | United Kingdom |
| **Urgent Authorisation** | An authorisation given by the managing authority for up to a maximum of seven days. In exceptional circumstances on further application by the managing authority, this can be extended by the Supervisory Body for up to a further seven days. An urgent authorisation gives the managing authority lawful authority to deprive a person of their liberty in hospital whilst the standard deprivation of liberty authorisation process is undertaken within seven days unless extended. |

# Main Policy Content Details

The Mental Capacity Act 2005 (Ref 1), covering England and Wales, provides a statutory framework for people who lack capacity to make decisions for themselves.

When someone lacks capacity to make decisions or take actions for themselves, others may have to make those decisions on their behalf. When they do this, they should not deprive the person who lacks capacity of their liberty, unless it is essential to do so in the person’s best interests and for their own safety and is the least restrictive option to provide care.

This document helps explain how to identify when a person is, or is at risk of, being deprived of their liberty and how deprivation of liberty may be avoided. It also explains the safeguards that have been put in place to ensure that deprivation of liberty, where it does need to occur, has a lawful basis. The Trust applies the Mental Capacity Act 2005 and expects its employees to act if they suspect that a person who lacks capacity is being deprived of their liberty unlawfully.

It describes the responsibilities of all clinical employees working within the Trust who provide care and treatment for people who lack capacity or who are involved in assessing capacity or in making best interest decisions. This means employees paying attention to the Mental Capacity Act 2005 – Code of Practice (Ref 2) and being able to show that they are familiar with the guidance in it.

## The Mental Capacity Act (MCA)

**Five Key Principles of the Mental Capacity Act (2005)**

The MCA (2005) is underpinned by a set of five key principles set out in Section 1 of the Act:

1. **A presumption of capacity** – every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is has been assessed otherwise.
2. **Individuals being supported to make their own decisions** – a person must be given all

practicable help before anyone treats them as not being able to make their own decisions.

1. **Unwise decisions** – just because an individual makes what might be seen as an unwise decision, they should not be treated as lacking capacity to make that decision.
2. **Best interests** – an act done or decision made under the Act for or on behalf of a person who lacks capacity must be done in their best interests.
3. **Least restrictive option** – anything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms.

**The Test of Capacity**

The MCA (2005) sets out a two-stage test of capacity to help determine if a person lacks capacity to make particular decisions.

**Stage 1: Does the person have an impairment of, or a disturbance in the functioning of, their mind or brain?**

Stage 1 requires proof that the person has an impairment of the mind or brain, or some sort of disturbance that affects the way their mind or brain works. If a person does not have such an impairment or disturbance of the mind or brain, they will not lack capacity under MCA (2005) and the second stage of the test must not be undertaken.

Examples of an impairment or disturbance in the functioning of the mind or brain may include the following:

* Conditions associated with some forms of mental illness;
* Dementia;
* Significant learning disabilities;
* The long-term effects of brain damage;
* Physical or medical conditions that cause confusion, drowsiness or loss of consciousness;
* Delirium;
* Concussion following a head injury;
* The symptoms of alcohol or drug use.

***Note: A diagnosis of any of the above does not necessarily equal lack of capacity.***

**Stage 2: Does the impairment or disturbance mean that the person is unable to make a specific decision when they need to?**

For a person to lack capacity to make a decision, MCA (2005) says their impairment or disturbance must affect their ability to make the specific decision when they need to. But first, people must be given all practicable and appropriate support to help them make the decision for themselves (see page 19, principle 2of the MCA Code of Practice (2005). Stage 2 can only apply if all practicable and appropriate support to help the person make the decision has failed.

The impairment or disturbance does not have to be permanent. A person can lack capacity to make a decision at the time it needs to be made even if:

* The loss of capacity is partial;
* The loss of capacity is temporary;
* Their capacity changes over time.

A person may also lack capacity to make a decision about one issue but not about others.

The second stage of the capacity test tests the person’s functional ability to make a specific decision. The following four domains need to be considered;

1. The person’s ability to understand the information relevant to the decision;
2. The person’s ability to retain the information for duration sufficient to make the decision;
3. The person’s ability to weigh/use information to inform the decision;
4. The person’s ability to communicate their decision by any means; verbally, using sign language, writing/drawing, muscle or facial movements (for instance blinking, hand squeezing etc.).

To apply the second stage of the test appropriately it is important NOT to assess a person’s understanding before they have been given relevant information about the decision. This should include the nature of the decision, the reason why the decision is needed and the likely consequences or outcomes of deciding one way or another or of making no decision at all.

## Deprivation of Liberty Safeguards (DOLS)

### Introduction

The majority of patients who lack capacity to make decisions about their care and treatment and admission to or discharge from hospital can be treated in their best interests under s.5 MCA 2005. Some patients need additional protection to ensure they do not suffer harm, especially in situations where delivering the necessary care and / or treatment requires their personal freedoms to be restricted to the point of actually depriving them of their liberty. Whilst the Trust must deliver care without restricting people’s personal freedoms wherever possible, health and social care staff establish it is necessary to deprive someone of their liberty, in certain circumstances, in order to give them care or treatment that is in the person’s best interest and protects them from harm.

The Deprivation of Liberty Safeguards (DOLS) (Ref 3) is a legal provision which became law in April 2009.  The safeguards are in addition to and part of the MCA (2005), they do not replace it.

These safeguards apply to people in hospitals and care homes registered under the Care Standards Act 2000 – (Ref 5) and apply to people in England and Wales.

The MCA (2005) Deprivation of Liberty Safeguards (2009) (MCA DOLS) exist to protect people who are not able to consent to decisions about their care and treatment when they need to be cared for in a particularly restrictive way. The Safeguards set out a standard process that hospitals and care homes should follow if they think it will be necessary to deprive a person of their liberty to deliver a particular care plan that is in the person’s best interests. By following the MCA DOLS, hospital and care home employees can ensure that people are deprived of liberty only when necessary and within the law.

The safeguards exist to provide a legal framework that upholds individuals’ rights under Article 5 of the Human Rights Act 1998 (Ref 6) and this affords individuals suitable protection in those circumstances where a deprivation of liberty appears to be unavoidable and is in their best interests.

The DOLS does this by providing:

* An authorisation and review process,
* A representative to act for the person and protect their interests,
* Rights of challenge to the Court of Protection against unlawful deprivation of liberty,
* Right to have the decision relating to the deprivation of liberty reviewed and monitored on a regular basis.

The DOLS apply to anyone:

* Aged 18 years and over.
* Has been diagnosed as experiencing a mental health illness, disorder or disability of the mind – who has not been detained under the Mental Health Act (MHA) and who has been assessed as lacking capacity.
* Lacks the capacity to give informed consent to the arrangements made for their residence in order to receive treatment and / or care.
* For whom deprivation of liberties is considered under the European Court of Human Rights – Article 5 (Ref 7), after an independent assessment to be necessary in their best interests to protect them from harm.

These safeguards do not apply to people detained under the Mental Health Act 1983.

On March 19th 2014 the Supreme Court Judgement (Ref 9) handed down its judgement in the matter of P v Cheshire West and Chester Council and another and P and Q v Surrey County Council. Amongst the outcomes of this judgement was a revision of the test of what constitutes a deprivation of liberty, under the Deprivation of Liberty Safeguards (2009) to an “acid test”.

## When to consider a DOLS Application

The three acid test criteria for whether a deprivation of liberty is present are:

1. The person lacks mental capacity to consent to be accommodated in the Trust’s care for the purpose of receiving care and treatment.
2. The person is subject to continuous supervision and control.
3. The person is not free to leave.

All three “acid test” criteria must be met before a DoLS authorisation is requested from the relevant Supervisory body.

**The following are potential indicators of Point 2 (continuous supervision and control) of the acid test:**

* How regularly does the person require support to meet their care needs i.e. throughout the day, throughout the night.  (The higher the frequency the support is required to exercise the duty of care, the more they will be defined as receiving continuous supervision).
* How regularly does the person require supervision around their medical needs/treatment i.e. throughout the day, throughout the night.  (The higher the frequency the support is required to exercise the duty of care, the more they will be defined as receiving continuous supervision).
* Consider what risk management plans are in place to maintain a safe environment for the person i.e. regular observations and supervisions from employees throughout the day and night to reduce risk of harm and maintain a safe environment (detail risks and level of restrictions)

Note: Continuous supervision could include - hourly checks, 1:1 support on a continuous or intermittent basis, the supervision of mobility/care tasks, the monitoring of falls.

**The following are potential indicators of Point 3 (the person is not free to leave) of the acid test**

* This should not be assessed solely by whether a person may be actively seeking to leave or objecting to the stay but applies equally if the patient is fully compliant with care, treatment and restrictions. The test of whether to consider an application is to be based on the action the employees would need to take in order to prevent harm towards the patient should they try to leave. If this action would be to prevent them (in their best interests) from leaving to safeguard them from harm, an application should be made.

The safeguards cover patients admitted to the Trusts’ acute and community hospitals, and third party responsibilities such as in care homes, and are designed to protect the interests of a vulnerable adult and to ensure people receiving care are given the care they need to the least restrictive regimes by:

* Providing safeguards for vulnerable people.
* Preventing decisions that deprive vulnerable people of their liberty unlawfully.
* Avoiding unnecessary bureaucracy.
* Providing a person the right of challenge to an unlawful detention.

## What is a DOLS Authorisation?

* Where the acid test criteria are met a DOLS authorisation should be requested from the relevant Supervisory Body (Local Authority where the person resides).
* DOLS is a statutory process which involves a number of assessments carried out by the Supervisory Body to consider if a person has been deprived of their liberty.
* The Managing Authority (the Trust) makes the request for DOLS assessment to the Supervisory Body (Local Authority where the person resides).
* If the deprivation is already occurring, the Managing Authority (the Trust) can grant itself an urgent authorisation for a period of seven days, alongside an application for a standard authorisation which will commence the statutory process.
* If the Supervisory Body agrees that the person is being deprived in their best interests they will grant an authorisation to the hospital which legally allows the hospital to detain the person for a specified time.

The Managing Authority (the Trust) must apply to the Supervisory Body (Local Authority) for authorisation of deprivation of liberty if a person who lacks capacity is:

* About to be admitted to hospital and the managing authority believes the person risks being deprived of their liberty. Application cannot be made to transport a patient to another care facility.
* Already in the hospital and is being care for or treated in a way which deprives them of their liberty.

Transporting a person who lacks capacity from their home, or another location to a hospital by ambulance in an emergency will not usually amount to a deprivation of liberty. In almost all cases, it is likely that a person can be lawfully taken to a hospital or care home by ambulance under the wider provisions of the Act, as long as it is considered that being in the hospital or care home will be in their best interests.

The Supreme Court Judgement has clarified that there is a deprivation of liberty when the person:

* is under continuous supervision and control and
* is not free to leave and the person and
* Lacks capacity to consent to these arrangements.

The Law Society Guidance (Deprivation of Liberty: a Practical Guide) 4.51(Ref 10) suggests the following questions may help establish whether an individual is deprived of their liberty in a hospital setting:

* What liberty-restricting measures are being taken?
* When are they required?
* For what period will they endure?
* What are the effects of any restraint or restrictions?
* What are the views of the person, their family or carers?
* How are any restraints or restrictions to be applied?
* Are there less restrictive options available?
* Is force or restraint (including sedation) being used to admit the patient to a hospital to
* Which the person is resisting admission?
* Is force being used to prevent a patient leaving the hospital, hospice, or ambulance where
* The person is persistently trying to leave?
* Is the patient prevented from leaving by distraction locked doors, restraint, or because they are led to believe that they would be prevented from leaving if they tried?
* Is access to the patient by relatives or carers being severely restricted?
* Is the decision to admit the patient being opposed by relatives or carers who live with
* The patient?
* Has a relative or carer asked for the person to be discharged to their care and is the
* request opposed or has it been denied

## How do the MCA DOLS relate to the MCA (2005)?

The MCA DOLS do not replace other safeguards in the MCA (2005). Instead, any action taken under the MCA DOLS must be in line with the five key principles of the MCA (2005):

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

## Making a MCA DOLS Application

**All Forms are accessible via the Trust intranet under Deprivation of Liberty Safeguards:**

The correct form should be considered on application, this will be dependent on medical or social needs at the time of assessment.

* **Standard Request (Form 1) Urgent Exemplar A not medically fit**: Urgent authorisations can be issued by managing authorities (the Trust) where there is a need to deprive someone of their liberty immediately in their own best interests to protect them from harm, and are valid for a maximum of seven calendar days. When issuing an urgent authorisation, managing authorities must, simultaneously apply to their Supervisory Body for a Standard Authorisation to be issued within the period of the urgent authorisation.
* **Standard Request (Form 1) Urgent Exemplar B delayed discharge**:

The same applies for patients whose discharge is delayed due to on-going needs being identified.

**Request for extension**: If there are exceptional reasons for doing so, the DOLS Office may extend the duration of an urgent authorisation by up to seven days. Important note: it is essential that the Trust make any necessary request for an extension promptly. The Trust can request an extension by updating Form 1. In all cases, the Trust must give the person being deprived of their liberty, and any section 39A IMCA acting for them, notice in writing that the Trust have made the request.

## Trust Deprivation of Liberty Safeguards Process Checklist

A step-by-step process checklist must be completed and forwarded to the Mental Health Act and Safeguarding Adults at Risk Administrator by employees for each DOLS application made. The checklist can be found on the intranet and in Appendix C to this Policy.

## MCA DOLS Assessment Process (Supervisory Body)

Under the MCA DOLS, a series of six assessment requirements must be met in determining whether the DOLS apply, and whether it is necessary to deprive a person of their liberty in their own best interests to protect them from harm. Once the Supervisory Body has received an application for a Standard Authorisation, and is satisfied that it is valid and correct, they must commission the required assessments.

The six required assessments are as follows:

* **Age Assessment –** to assess whether the person being deprived of their liberty is 18 years and over
* **Mental Health Assessment –** to assess whether the person deprived of liberty is suffering from a mental disorder within the meaning of the Mental Health Act (1983). This must be carried out by a Mental Health assessor.
* **Mental Capacity Assessment –** this assessment must determine whether the person being deprived of liberty lacks capacity and to decide whether the person should be admitted to, or remain in, the hospital or place of care in which the person is being, or will be, deprived of liberty.
* **No Refusal Assessment –** requested authorisation does not conflict with other existing authority for decision making for that person, such as a valid and applicable Advance Decision to refuse treatment, Lasting Power of Attorney or Court appointed Deputy.
* **Eligibility Assessment –** the assessment should determine whether the person is eligible to be deprived of liberty under the MCA DOLS.
* **Best Interest Assessment-** the assessment must determine whether a deprivation of liberty is taking place and ensure that any deprivation is in the best interests of the person, necessary to prevent harm to themselves and is proportionate response to the likelihood and seriousness of that harm.

## MCA DOLS Assessment Outcomes

### AUTHORISATION NOT GRANTED

If any of the assessments conclude that the relevant person does not meet qualifying requirements, the Supervisory Body cannot issue a Deprivation of Liberty authorisation.

The Supervisory Body must record this decision and notify the following people:

* The Managing Authority
* The Relevant Person
* Any Relevant Person’s representative if there is a previous authorisation in force
* Any section 39A Independent Mental Capacity Advocate (IMCA) involved

From the moment authorisation is declined, any continuation of deprivation of liberty is unlawful. The managing authority should amend the care plan immediately, to avoid further deprivation of liberty.

Issuing a Standard Authorisation

If the outcome of all assessments are positive, the Supervisory Body must issue a standard deprivation of liberty authorisation (Form 12)

It is the responsibility of the Supervisory Body to set the time period of the Standard Authorisation. This should be for as short a time as possible, and no longer than the time period suggested by the best interest assessor.

The law requires the Supervisory Body to issue a standard deprivation of liberty authorisation in writing and to include certain details, including the purpose of the deprivation of liberty and its duration. It is also required to keep written records of any Standard Authorisations issued.

Once issued, Supervisory Body are required to give a copy of the authorisation to:

* The managing authority
* The relevant person
* The relevant person’s representative
* Any section 39A IMCA involved
* Every interested person named by the best interests’ assessor in their report as somebody they have consulted in carrying out their assessment

## Review of Standard Authorisation

The Supervisory Body is responsible for reviewing Standard Authorisations. They have the discretion to carry out a review at any time if it appears appropriate to them to do so. However, they are legally required to carry out a review where the relevant person, their RPR or the Managing Authority requests one.

A standard Form is provided for managing authorities to use for the purpose of requesting a review. The Trust has a responsibility to notify the Supervisory Body if they feel that the authorisation is no longer required or the patient is discharged or being transferred to another care provider.

When a request for a review is made it should include, which, if any, of the qualifying requirements should be reviewed. The Supervisory Body will then commission the assessments required and inform the relevant person, their representative and the managing authority that a review is being carried out.

## Termination of a Standard Authorisation

A Standard Authorisation will terminate if:

* It comes to the end of its authorised period, with no fresh authorisation replacing it, or
* A review concludes that it should be terminated.
* The person is transferred to another care provider or discharged
* Care employees believe that the restrictions are no longer necessary and have requested a review.

The relevant person should cease to be deprived of their liberty immediately. It would be unlawful to continue to deprive someone of their liberty, leaving the managing authority open to legal challenge.

If a managing authority believes that a person should continue to be deprived of their liberty beyond the period permitted by the authorisation, they should apply for a new authorisation.

If an authorisation is terminated, the following will be notified:

* The relevant person
* The relevant person’s representative
* The managing authority
* Every interested person named by the best interest’s assessor in their report as somebody they have consulted in carrying out their assessment.

## Court of Protection

The Court of Protection provides a forum for solving problems related to the Mental Capacity Act 2005 in general and gives people the right of appeal in MCA DOLS cases to ensure compliance with the law. If an urgent authorisation is has been granted, the Court of Protection can:

* Determine if the urgent authorisation should have been granted
* Determine how long the authorisation should be in place
* Examine the reasons why the urgent authorisation has been granted.

After a Standard Authorisation has been granted, the Court of Protection has powers similar to those listed above. However, it can also determine whether the person meets one or more of the MCA DOLS qualifying requirements or if the Standard Authorisation should be subject to any specific conditions.

The following people have an automatic right to access to the Court of Protection once an urgent or Standard Authorisation has been granted:

* The person deprived of their liberty
* Their representative
* An interested person
* The donee of a relevant lasting power of attorney
* A deputy appointed by the Court of Protection to act for the person concerned.

## Death under a DOLS

When a patient dies whilst under an Urgent Authorisation, an Extension to Urgent Authorisation or if a Standard Authorisation is in place. **A death under a DOLS is to be reported to the Coroner’s Office. The Mortuary need to be informed of the DOLS** by indicating on the ‘Notice of Death Document’ that the patient’s death was whilst under a DOLS.

## Mental Health Act (1983)

Care should always be delivered in the least restrictive way and in proportion to the presenting risk to both the patient and others. Consideration of the Mental Health Act (1983) (Ref 11) needs to be undertaken when the patient meets the criteria for detention under the Mental Health Act. In particular where the primary need is assessment, or assessment followed by treatment of the mental disorder and in the interest of the patients health or safety or the protection of other people.

The criteria for detention under the MHA:

* Patient is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and
* Patient ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons

Before deciding whether to admit, treat and detain an incapacitated patient under the provisions of the MHA, consideration should always be given as to:

* Whether or not admission and treatment can be achieved under the application of the MCA/DOLS regime instead
* Whether that regime would be less restrictive than detention under the MHA

All the restrictions should be considered that will be or are being placed on the patient in order to deliver the care / treatment proposed in hospital. If the overall package of care (including any necessary restrictions) that will be or is being delivered primarily to ensure the safety and protection of others then the Mental Health Act should be used where necessary and appropriate.

# Duties and Responsibilities of Individuals and Groups

## The Trust Board

The Managing Authority responsibilities are held by the Trust Board and includes assurance that systems and processes are in place and are effectively working to uphold the Trust legal and regulatory requirement.

## The Chief Nurse

The Chief Nurse (as the designated Executive lead) has overall responsibility for the implementation of the Mental Capacity Act and DOLS Act 2005 updated in 2007.

## Head of Mental Health and Safeguarding Adults at Risk

The Head of Mental Health and Safeguarding Adults at Risk manages the day to day operations and strategic development of Mental Health Services and provides assurance to the Trust Mental Health Act and Mental Capacity Act Committee on compliance with the Mental Health Act and Mental Capacity and DOLS Act identifies any risk and makes recommendation on service improvement and redesign.

## Safeguarding Adults at Risk, MCA and DOLS Lead

The Safeguarding Adults at Risk, MCA and DOLS Lead provides specialist support and advice on the day-to-day operations and supports strategic development of services with the Head of Mental Health and Safeguarding Adults at Risk. Identifies risks and makes recommendation on service improvement and redesign to the Head of Mental Health and Safeguarding Adults at Risk.

## Mental Health Act and Safeguarding Adults at Risk Administrator (including MCA and DOLS)

Receives and scrutinise relevant papers ensuring sections of the Standard Forms are completed accurately. The administrators will ensure that the number of applications and outcome of applications are recorded and presented to the Mental Health Act and Mental Capacity Act Committee and external agencies (Care Quality Commission (CQC) and Clinical Commissioning Group (CCG)). The Mental Health Act and Safeguarding Adults at Risk Administrator also provides secondary support to the Safeguarding Adults at Risk Lead including MCA and DOLS.

## Divisional Directors of Nursing, Ward Managers and Medical/Surgical Consultants

Divisional Directors of Nursing, Ward Managers and Consultants should ensure that employees under their line management have received the Trust MCA DOLS training. Every registered Practitioner has a responsibility under their own professional codes to ensure their practice complies with the MCA (2005).

Ward Managers and Consultants should ensure that an application is made to the Supervisory Body for authorisation to continue with the care programme and deprive the person of their liberty. If a person or their representative does not agree with the decision of the appeal to the Trust, the consultant in charge of the patient care should consider an application to the Court of Protection.

## Site Managers

The Site Managers must support employees during out of working hours, weekends and bank holidays in identifying patients that may be deprived of their liberty and to ensure that an application is made to the Supervisory Body.

## On-Call Manager

To support the Site Manager in fulfilling their duties during out of working hours, weekend and bank holidays. To advise the Executive Director on-call of any cases that requires referral to the Court of Protection. The Executive Director may wish to seek legal advice through the Trust Solicitors.

## Mental Health Act and Mental Capacity Act Committee

The Mental Health Act and Mental Capacity Act Committee is a sub-group of the Trust Board that provides assurance to the Board on compliance with its statutory and regulatory duties.

## Mental Health Act and Mental Capacity Act Committee Operational Group

To regularly review the Trust mental health systems and processes as well as delivery of service level agreement with mental health providers ensuring that the Mental Health Act and Mental Capacity Act Committee are kept updated with progress and risk.

## Chief Executive

The Chief Executive is ultimately responsible for the implementation of this document.

## Deputy Divisional Directors

All Deputy Divisional Directors are to ensure that the list of new or revised policies, competencies, clinical guidelines, strategies, plans, protocols or procedural documents published each month is on the agenda at Divisional meetings to ensure that the documents are drawn to the attention of managers and general users. All Deputy Divisional Directors must ensure that employees within their area are aware of the document; able to implement the document and that any superseded documents are destroyed.

# Monitoring Compliance and Effectiveness of Implementation

The arrangements for monitoring compliance are outlined in the table below: -

| **Measurable policy objectives** | **Monitoring / audit method** | **Monitoring responsibility** (individual / group /committee) | **Frequency of monitoring** | **Reporting arrangements** (committee / group to which monitoring results are presented) | **What action will be taken if gaps are identified?** |
| --- | --- | --- | --- | --- | --- |
| All action taken in respect of patients subject to the MCA DOLS will be in accordance with the Act and the procedures outlined in this policy. | Number of MCA DOLS referrals  Number referrals authorised or not authorised  Number of referrals to IMCA services  Number of complaints received in relation to application of the MCA DOLS | MHA Administrator  Head of Mental Health and Safeguarding Adults at Risk | Quarterly  Quarterly | MHA & MCA Operational Group  MHA Committee | If numbers are significantly lower than previous years a review of systems and processes may be required |
| Ensuring appropriate and sufficient training is available and promoted to give employees the knowledge and skills to comply with this policy. | Contents of training package adequate and up-to-date  % employees undertaking training  Site Managers are appropriately trained | MHA & MCA Operational Group | Bi-monthly | MHA Committee | Action plan to achieve training compliance  Consider putting on the risk register |
| External Reviews | Issues Identified by CQC following visits | MHA & MCA Operational Group | As required | MHA Committee | Action plan if required |

# Review Date, Arrangements and Other Document Details

## Review Date

This document will be fully reviewed every three years in accordance with the Trust’s agreed process for reviewing Trust -wide documents. Changes in practice, to statutory requirements, revised professional or clinical standards and/or local/national directives are to be made as and when the change is identified.

## Regulatory Position

Mental Health Act, Mental Capacity Act

## References, Further Reading and Links to Other Policies

The following is a list of other policies, procedural documents or guidance documents (internal or external) which employees should refer to for further details:

| **Ref. No.** | **Document Title** | **Document Location** |
| --- | --- | --- |
| 1 | Mental Capacity Act 2005 | www.opsi.gov.uk/acts/acts2005 |
| 2 | Mental Capacity Act 2005 – Code of Practice | www.publicguardian.gov.uk |
| 3 | Mental Capacity Act 2005: Deprivation of Liberty Safeguards - Code of Practice to supplement the main Mental Capacity Act 2005 Code of Practice | www.dh.gov.uk/en/Publicationsandstatistics  Hard copy available from Mental Health Act & Safeguarding Adults at Risk Administrator  (Safeguarding Team Office, Clover Centre) |
| 4 | Mental Capacity Act 2005: Deprivation of Liberty Safeguards (DOLS) | www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity  Guides for Hospitals/Care Homes/ PCT’s etc. |
| 5 | Care Standards Act 2000 | [www.legislation.gov.uk](http://www.legislation.gov.uk) |
| 6 | Human Rights Act 1998 | [www.legislation.gov.uk](http://www.legislation.gov.uk) |
| 7 | European Convention on Human Rights Act 1998 | [www.legislation.gov.uk](http://www.legislation.gov.uk) |
| 8 | Enduring Powers of Attorney | [www.legislation.gov.uk](http://www.legislation.gov.uk) |
| 9 | Supreme Court Judgement (2014) | https://www.gov.uk/government |
| 10 | The Law Society Deprivation of Liberty a Practical Guide, April 2015 | http://www.lawsociety.org.uk/support-services/advice/articles/deprivation-of-liberty |
| 11 | Mental Health Act 1983 | http://www.legislation.gov.uk/ukpga/1983/20/contents |

## Consultation Process

The following is a list of consultees in formulating this document and the date that they approved the document:

| **Job Title / Department** | **Date Consultee Agreed Document Contents** |
| --- | --- |
| Mental Health Act and Mental Capacity Act Committee | 03 June 2016 |
| Mental Health Act and Mental Capacity Act Committee Operational Group | 18 March 2016 |
| Chief Nurse | 16 March 2016 |
| Mental Capacity Act Programme Manager, Joint appointment with Swindon Borough Council and Swindon Clinical Commissioning Group Adult Social Care | 12 April 2016 |
| Consultant Physician/Geriatrician, Department of Medicine for the Elderly (DOME) | 16 March 2016 |
| Consultant Liaison Psychiatrist AWP / Responsible Clinician GWH | 23 March 2016 |
| Ward Manager | 12 July 2016 |
| Junior Sister | 12 July 2016 |



# Appendix A – Equality Impact Assessment

**Equality Impact Assessment**

**Our Vision**

Great Western Hospitals NHS Foundation Trust wants its services and opportunities to be as accessible as possible, to as many people as possible, at the first attempt.

**Are we Treating Everyone Equally?**

Define the document. What is the document about? What outcomes are expected?

Consider if your document/proposal affects any persons (Patients, Employees, Carers, Visitors, Volunteers and Members) with protected characteristics? Back up your considerations by local or national data, service information, audits, complaints and compliments, Friends & Family Test results, Staff Survey, etc.

If an adverse impact is identified what can be done to change this? Are there any barriers? Focus on outcomes and improvements. Plan and create actions that will mitigate against any identified inequalities.

If the document upon assessment is identified as having a positive impact, how can this be shared to maximise the benefits universally?

# Appendix B – Quality Impact Assessment Tool

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Purpose**  To assess the impact of individual policies and procedural documents on the quality of care provided to patients by the Trust both in acute settings and in the community. | | | | |
| **Process**  The impact assessment is to be completed by the document author. In the case of clinical policies and documents, this should be in consultation with Clinical Leads and other relevant clinician representatives.  Risks identified from the quality impact assessment must be specified on this form and the reasons for acceptance of those risks or mitigation measures explained. | | | | |
| **Monitoring the Level of Risk**  The mitigating actions and level of risk should be monitored by the author of the policy or procedural document or such other specified person.  High Risks must be reported to the relevant Executive Lead. | | | | |
| **Impact Assessment**  Please explain or describe as applicable. | | | | |
| 1. | Consider the impact that your document will have on our ability to deliver high quality care. | The main purpose of policies and procedural documents is to standardise practice and service delivery to reflect best practice, reduce variations and hence improve quality and equality. Having effective, up- to-date and easy to follow documents minimises risk to patients, employees and the Trust. The White paper, The New NHS, Modern, Dependable and subsequent Department of Health directives relating to quality emphasises the importance of documents providing guidance for practitioners, employees and managers. | | |
| 2. | The impact might be positive (an improvement) or negative (a risk to our ability to deliver high quality care). |
| 3. | Consider the overall service - for example: compromise in one area may be mitigated by higher standard of care overall. |
| 4. | Where you identify a risk, you must include identify the mitigating actions you will put in place. Specify who the lead for this risk is. | | | No risks identified |
| **Impact on Clinical Effectiveness & Patient Safety** | | | | |
| 5. | Describe the impact of the document on clinical effectiveness. Consider issues such as our ability to deliver safe care; our ability to deliver effective care; and our ability to prevent avoidable harm. | | No risks identified | |
| **Impact on Patient & Carer Experience** | | | | |
| 6. | Describe the impact of the policy or procedural document on patient / carer experience. Consider issues such as our ability to treat patients with dignity and respect; our ability to deliver an efficient service; our ability to deliver personalised care; and our ability to care for patients in an appropriate physical environment. | | No risks identified | |
| **Impact on Inequalities** | | | | |
| 7. | Describe the impact of the document on inequalities in our community. Consider whether the document will have a differential impact on certain groups of patients (such as those with a hearing impairment or those where English is not their first language). | | No risks identified | |

# Appendix C - DOLS Standard Operational Procedure



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

**Managing Authority:** Great Western Hospital NHS Foundation Trust

**Supervisory Body:** Local Authority

**Standard Operational Procedure**

* Determine if patient lacks capacity to consent to be accommodated to receive care and treatment.
* To access capacity use the Mental Capacity 2 stage test, this will help you to establish the person’s mental capacity (available on the intranet under mental capacity).

Medical and Registered Nursing employees are able to complete Mental Capacity Act (MCA) for DoLS as this is day to day care. Should the assessment concern **serious medical treatment** / day to day treatment plan, then the Responsible Clinician (Consultant/surgeon) should complete the mental capacity assessment. Please contact the Safeguarding Adults Team should you require support on Ext 7345 or 4538.

* Record outcome of mental capacity assessment in patient’s medical notes.
* Complete Best Interest Decision Record (available on the intranet under mental capacity).
* Determine if the patient is being deprived of their liberty. The following criteria must be met:

Priority 1 – patient is objecting to care, trying to leave the environment, on continuous supervision i.e. 1:1 support.

Priority 2 – patient is compliant, lacks capacity to consent to care and treatment although is not free to leave and requires supervision and control.

* If patient lacks capacity to consent to be accommodated to receive care and treatment and is deprived of their liberty and it is anticipated they will be an in-patient for longer than 7 days, please make a DoLS application.
* **Please complete the DoLS application process using the DoLS Application check list (available on the intranet under Mental Capacity and Deprivation of Liberty DoLS).**

**Application for Urgent and Standard DoLS Authorisation**

The Standard and Urgent Authorisation forms are combined so when submitting the DoLS application form you are making an application for an Urgent and Standard DoLS Authorisation.

* The Urgent Authorisation will expire at midnight on Day 7 of application ***(Day 1 of application being the day of application).*** The Urgent Authorisation comes into force immediately.
* Remember to log application in Medway clinical note, electronic whiteboard. Enter date and time of application and update as necessary i.e. extension date.
* DoLS column on electronic whiteboard date of expiry will display.
* Remember to forward application to the relevant Supervisory Body.
* Remember to email a copy of the application to the Safeguarding Adults at Risk team [safeguardingadultsteam@gwh.nhs.uk](mailto:safeguardingadultsteam@gwh.nhs.uk) (displays as Safeguarding.AdultsTeam on internal recipients)

**Role of Supervisory Body**

The Supervisory Body will acknowledge application of the Urgent Authorisation and will contact the ward with details of the planned assessment dates.

**If the Supervisory Body has not assessed the patient for DoLS please make an application for Extension to Urgent Authorisation.**

**Application for Extension to Urgent Authorisation**

* If the patient has not been assessed by the Supervisory Body within 6 days of the Urgent Authorisation application, the ward must apply to the Supervisory Body for an Extension using the ‘Request for an Extension to the Urgent Authorisation’ which can be found within the body of FORM 1 DoLS application form.
* Send a copy of the Request for an Extension to the Urgent Authorisation to the relevant Supervisory Body.
* Email a copy of the Extension to Urgent Authorisation to the Safeguarding Adults at Risk Team using generic email: [safeguardingadultsteam@gwh.nhs.uk](mailto:safeguardingadultsteam@gwh.nhs.uk) (displays as Safeguarding Adults Team on internal recipients)
* Log this date as the new application date on the electronic whiteboard in the DoLS column in Medway clinical note, electronic whiteboard. Enter date and time of extension of application and update as necessary.

**Role of Supervisory Body**

The Supervisory Body acknowledge/Authorise the Extension of the Urgent Authorisation.

**Patient not assessed within 6 days of Urgent Application:**

**Lapse of Urgent DoLS Authorisation: please do the following:**

* The ward must apply to the Supervisory Body for an Extension to the Urgent Authorisation using the ‘Request for an Extension to the Urgent Authorisation which can be found within the body of FORM 1 DoLS application.
* Complete an IR1 selecting **cause 1:** DoLS lapse seven days then **cause 2:** Vulnerable Patient
* Remember to log extension date as the new application date on the electronic whiteboard in the DoLS column in Medway clinical note, electronic whiteboard. Enter date and time of extension of application and update as necessary.
* Remember to forward extension application to the relevant Supervisory Body.
* Remember to forward copy of extension application to the Safeguarding team

[safeguardingadultsteam@gwh.nhs.uk](mailto:safeguardingadultsteam@gwh.nhs.uk) (displays as Safeguarding .Adults Team on internal recipients)

* Document in the patient’s medical notes the Urgent and/or the Extension to the Urgent Authorisation has expired and patient has not received and assessment and that the IR1 (for 6 day lapse) has been completed.
* **If there are any changes in the patient’s condition or circumstances, please contact the Supervisory Body to address priority of patient assessment**.
* Email the Safeguarding Adults at Risk Team details of status of patient.

**Role of Supervisory Body**

The patient will remain on the Supervisory Body waiting list for assessment for a Standard Authorisation.

**Lapse of Urgent and Extension to Urgent Authorisation**

The patient continues to be potentially deprived of their liberty (in their best interests) but the statutory assessment process has not taken place if they have not been assessed by the Supervisory Body under the DoLS application.

**When an Urgent and/or an Extension to the Urgent has not been assessed or has lapsed please follow the below:**

* Inform the Supervisory Body by Day 14 the urgent extension is due to expire.
* Ensure an update to date 2 stage mental capacity assessment is in place.
* All care plans and arrangements to be updated to ensure they are the least restrictive option in relation to consenting to remain at the Great Western Hospital to receive the proposed care and treatment.
* Ensure an update best interest record is in place.
* All the above to documented in the patients medical records.
* Document in the patient’s medical notes the Urgent and/or the Extension to the Urgent Authorisation has expired and patient has not received and assessment and that the IR1 (for 7 day lapse) has been completed.
* **If there are any changes in the patient’s condition or circumstances, please contact the Supervisory Body to address priority of patient assessment**.
* Email the Safeguarding Adults at Risk Team details of status of patient.

**Role of Supervisory Body**

The patient will remain on the Supervisory Body waiting list for assessment for a Standard Authorisation.

**DEATH UNDER A DOLS:**

**A patient is said to have died under a ‘DoLS’ when the following applies:**

* **Patient is under 7 day Urgent Application**
* **Patient is under Extension to Urgent (14 days)** *(Please note: If the 14 day extension has lapsed and the person has not been assessed for a Standard Authorisation, then this it is not a death under DoLS)*
* **Patient is under Standard Authorisation**
* **Please inform the Mortuary of the death** by indicating on the ‘Notice of Death Document’ (available on the intranet) that the patient’s death was whilst under a DoLS.
* ***The death of a person subject to a DoLS is reportable to the Coroner*** *as it is classed as a death in state detention within the meaning of the Coroners and Justice Act 2009.* The certifying doctor reports the death to the Coroner’s Office.

**POINTS TO REMEMBER:**

* Determine the persons’ mental capacity by using the Mental Capacity Assessment 2 stage test
* Follow the DoLS application check list (available on intranet under ‘mental capacity and deprivation of liberty)
* Any changes in patient status please notify:
* the Supervisory Body
* the Safeguarding Adults at Risk team [safeguardingadultsteam@gwh.nhs.uk](mailto:safeguardingadultsteam@gwh.nhs.uk) (displays as Safeguarding.AdultsTeam on internal recipients)

**Which Supervisory Body to contact?** Check the address of the patient and contact the following service:

|  |  |  |  |
| --- | --- | --- | --- |
| Deprivation of Liberty Safeguards in South West SERVICE DETAILS | | | |
| AREA | TELEPHONE | FAX | EMAIL |
| SWINDON:  **PREFER EMAIL**  **GWH secure email to swindon.gov.uk** | Tel: 01793 463239 | Fax: 01793 465866 | Julie Dart  [jdart@swindon.gov.uk](mailto:jdart@swindon.gov.uk)  Joanna Williams  [jwilliams8@swindon.gov.uk](mailto:jwilliams8@swindon.gov.uk)  Julia Keates  [jkeates@swindon.gov.uk](mailto:jkeates@swindon.gov.uk) |
| AREA | TELEPHONE | FAX | EMAIL |
| WILTSHIRE  **PREFER EMAIL GWH**  **secure email to wiltshire.gov.uk** | Tel: 01225 756598 | Fax: 01225 718274 | [dols@wiltshire.gov.uk](mailto:dols@wiltshire.gov.uk) |
| WEST BERKSHIRE | Tel: 01635 519056 | Fax: 01635 519939 |  |
| BATH & NE SOMERSET | Tel: 01225 396187 | Fax: 01225 831326 |  |
| GLOUCESTERSHIRE | Tel: 01452 426005 | Fax: 01452 427359 |  |
| OXFORDSHIRE | Tel: 01865 328064 | Fax: 0845 641 6416 |  |

|  |  |  |
| --- | --- | --- |
| **GWH Safeguarding Adults at Risk Team contact details:** | | |
|  | Telephone | email: |
| Jonathan Newman  Safeguarding Adults at Risk Lead | Tel: 01793 607345  Fax: 01793 605197 | [safeguardingadultsteam@gwh.nhs.uk](mailto:safeguardingadultsteam@gwh.nhs.uk)  (displays as Safeguarding.AdultsTeam on internal recipients) |
| Joy Gobey  MHA & Safeguarding Adults at Risk Administrator | Tel: 01793 604538  Fax: 01793 605197 | [safeguardingadultsteam@gwh.nhs.uk](mailto:safeguardingadultsteam@gwh.nhs.uk)  (displays as Safeguarding.AdultsTeam on internal recipients) |
| Wendy Johnson  Head of Safeguarding & Mental Health | Tel: 01793 607333 | [safeguardingadultsteam@gwh.nhs.uk](mailto:safeguardingadultsteam@gwh.nhs.uk)  (displays as Safeguarding.AdultsTeam on internal recipients) |

# Appendix D - MCA DOLS Assessment Process

Best Interest Assessor recommends person to be appointed as RPR

Authorisation expires and hospital request further authorisation

Review

Person or RPR request review

Hospital request review because circumstances change

Authorisation implemented by hospital

Authorisation is given and RPR appointed

Best Interest Assessor recommends period for which depravation of liberty should be authorised

All assessment support authorisation

Any assessment says no. Request for authorisation denied

Eligibility Capacity

No Refusal Assessment

Best Interest Capacity

Best Interest Assessment

Mental Health Assessment

Age Assessment

Assessment commissioned by the supervisory Body. IMCA instructed for anyone without a representative

In urgent situations a hospital can give urgent authorisation for 7 days while obtaining Standard Authorisation

Hospital identifies those at risk of deprivation of liberty and request authorisation from the supervisory Body