

**Deprivation Of Liberty
Safeguards Policy**
(2011)

Salford DOLS policy

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	POLICY DOCUMENT CONTROL PAGE
Title	Title: Salford Deprivation of Liberty Safeguards policy Version: 2 Date: 2011
Supercedes	Deprivation of Liberty Safeguards Policy (2010)
Originator	Originated by: Elly Davis Designation: Co-ordinator MCA/DOLS Department: Adult Safeguarding Unit Community Health & Social Care Directorate
Professional Group Approval	Referred for approval by: Elly Davis Referred to (insert name of groups): Salford Adult Safeguarding Board Directorate Management Group Lead Member
Review	Review: April 2012 Responsibility of: Elly Davis
Quality Control	Date Sent to the Adult Safeguarding Board: May 2011
Care Standards Link	Link to Standard References: Legislative framework to protect the interests of people who lack the mental capacity to consent to care/treatment. Part of the responsibility for Safeguarding Adults monitored by the Care Quality Commission. Training: A continual training programme/ awareness raising is required to fully implement this policy and it is ongoing in Salford. Staff across the local authority, trusts and other partner agencies have attended update events over the year. E-learning packages are being looked at to encourage independent study. Training/awareness to take place on: 'Mental Capacity Act and Deprivation of Liberty Safeguards'. Date: various and ongoing Provided by: Elly Davis, Co-ordinator MCA/DOLS This policy will be posted on Salford City Council and NHS Salford intranet and internet. Hard copy available at the Adult Safeguarding Unit. This policy will be circulated to colleagues across the City of Salford In electronic or hard copy as required.

1 Introduction

- 1.1 The purpose of this policy is to provide guidance on the implementation of the Deprivation of Liberty Safeguards in Salford and has been developed with specific reference to the Deprivation of Liberty Safeguards Code of Practice which supplements the Mental Capacity Act (2005) Code of Practice (2008).
- 1.2a This policy and procedural guidance must be read and followed in conjunction with the Mental Capacity Act (2005), it's associated regulations and statutory instruments, the Mental Capacity Act Code of Practice (2007), the Deprivation of Liberty Safeguards Code of Practice (2008), the forms and record keeping guide for Supervisory Bodies and the companion guide for Managing Authorities of care homes and hospitals.
- 1.2b The Mental Capacity Act Code of Practice and the Deprivation of Liberty Safeguards Code of Practice have statutory force and practitioners need to demonstrate that they follow this, recording all assessments and decisions made on behalf of any adult who lacks capacity to make a specific decision autonomously.
- 1.3 The Care Quality Commission monitors the Mental Capacity Act and Deprivation of Liberty Safeguards in care homes and hospitals (Managing Authorities). When CQC inspect Managing Authorities they will want confirmation and evidence that Managing Authorities meet the requirements of the Act and codes of practice.
- 1.4 The Mental Capacity Act (2005) received Royal Assent on 7 April 2005. The first part came into force in England and Wales on 1st April 2007. The final part including Lasting Power of Attorney came into force in October 2007.
- 1.5 The Mental Capacity Act (2005) applies to people aged 16 years and over. It provides a statutory framework to empower and give protection for people who lack capacity to make specific decisions for themselves at the time the decision has to be made. This can include people with dementia, learning disabilities, mental health problems, stroke, head injury, acquired brain injury and more. It makes clear who can take decisions, in what situations and how this must be done.
- 1.6 The Act enables people to plan ahead for a time when they may lack capacity. It covers major decisions about someone's property and affairs, healthcare treatment and where to reside. In addition, there is guidance on decisions about personal care (what someone eats, wears etc) where that person lacks capacity to decide themselves.
- 1.7 The Mental Capacity Act (2005) establishes a statutory framework, which encompasses current best practice and common law principles concerning people who lack mental capacity and those who take decisions on their behalf. It provides additional safeguards for both the cared for person and the carer. The Act deals with the assessment of a person's capacity and how to record decisions. It replaces statutory schemes for Enduring Powers of Attorney and Court of Protection with Lasting Powers of Attorney and Court Appointed Deputies.

1.8 The Mental Capacity Act (2005) is based on five principles;

Principle 1: *'A person must be assumed to have capacity unless it is established that he lacks capacity.'* (Section 1 (2)).

Principle 2: *'A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.'* (Section 1 (3)).

Principle 3: *'A person is not to be treated as unable to make a decision merely because he makes an unwise decision.'* (Section 1 (4)).

Principle 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 best interests.'* (Section 1 (5)).

Principle 5: *'Before the act is done, or the decision is made, regard must be had 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.'* (Section 1 (6)).

2 Understanding the Deprivation of Liberty Safeguards

- 2.1 Amendments to the Mental Health Act (1983) received Royal Assent in July 2007 have resulted in the Deprivation of Liberty Safeguards being introduced into the Mental Capacity Act (2005). They came into force on 1st April 2009. Deprivation of Liberty applies to people aged 18 years and over. If someone is being deprived of the liberty and they are aged under 18, it is necessary to look at the Children's Act (1989).
- 2.2 The Deprivation of Liberty Safeguards strengthen the protection of a very vulnerable group of people and tackle human rights incompatibilities by introducing Deprivation of Liberty Safeguards (DOLS) for people who lack capacity to make decisions about their care or treatment and who are deprived of their liberty to protect them from harm. This group of people are not eligible to be detained under the Mental Health Act
- 2.3 People who are assessed as having a disorder or disability of the mind, such as dementia or a profound learning disability and lack the mental capacity to consent to the care or treatment they need should be cared for in a way that does not limit their rights or freedom of action. However, in some cases people may need to be deprived of their liberty for care or treatment because this is necessary in their best interests to keep **them** safe and protect them from harm.
- 2.4 The DOLS apply only in the setting of a care home registered under the Care Standards Act (2000) or a hospital, they are known as a Managing Authority.
- 2.5 The safeguards require a hospital or care home (Managing Authority) to seek authorisation from a Supervisory Body which is a Local Authority for a care home or Primary Care Trust for a hospital in order to deprive the liberty of an adult aged 18 years or older who has been assessed as having a mental disorder, within the meaning of the Mental Health Act (1983). That means any disorder or disability of mind apart from dependence on alcohol or drugs. It includes all learning disabilities. The person must also be assessed as lacking capacity to consent to the restrictions imposed by the Managing Authority which amount to a deprivation of liberty.

- 2.6 The safeguards apply to both publicly and privately arranged placements.
- 2.7 The Deprivation Of Liberty Safeguards Code of Practice gives guidance how to identify a Deprivation of Liberty and how to report this if a person is being deprived without authorisation.
- 2.8 The safeguards provide a framework of actions to be taken when a person may need to be deprived of their liberty, how to assess an application for authorisation, criteria for when it should be granted, review, renewal, support and representation for people subject to authorisation and how authorisations can be challenged.
- 2.9 Someone can only be deprived of their liberty when it is in their best interests, that there is no alternative less restrictive way of providing their care. Any authorisation must be for the shortest period of time. An authorisation must not exceed one year.
- 2.10 The Deprivation Of Liberty Safeguards Code of Practice also suggests how to avoid a Deprivation of Liberty by promoting personal control and maximising autonomy within safety and risk assessed considerations. The safeguards promote best practice including the use of person centred planning, involvement of family and friends whilst always looking at least restrictive practices.
- 2.11 **IMPORTANT:** Even in situations where a Deprivation of Liberty has been authorised, this only permits the Deprivation of Liberty (for the period of time specified on the authorisation). A Deprivation of Liberty authorisation can be ended before a formal review. An authorisation permits a deprivation of liberty, it does not mean that a person must be deprived of their liberty where the situation no longer necessitates it.

3 Framework of action to be taken where a person may need an authorisation to deprive them of their liberty.

- 3.1 This authorisation process is for use in Salford. This procedure should be used by the Managing Authorities (care homes and hospitals) when applying for a deprivation of liberty to be authorised in Salford. **If advice or assistance is needed regarding any part of the application process please contact the Adult Safeguarding Unit on 0161 212 4323 or email DOLS@salford.gov.uk .**
- 3.2 There are two types of authorisation, **standard** and **urgent**. The Managing Authority, which is a care home or a hospital **must request** a standard authorisation if it appears likely that at sometime during the next 28 calendar days someone will be accommodated within their premises in the care home or hospital in circumstances that amount to a deprivation of liberty within the meaning of Article 5 of the European Convention of Human Rights. The request for a standard authorisation must be made to the Supervisory Body on DOLS Form 4 'Request for a Standard Authorisation. This can be found on the Salford City Council website (<http://www.salford.gov.uk/mca-professional-documentation.htm>) or on the Department of Health website. **If you experience problems accessing forms contact the Adult Safeguarding Unit on 0161 212 4323 or DOLS@salford.gov.uk**

- 3.3 Authorisations should be made **before** a deprivation of liberty occurs if possible. However, if a deprivation needs to commence before the **standard** authorisation has been obtained, a Managing Authority has the right to apply an **urgent** authorisation themselves, which will make the deprivation lawful for up to 7 calendar days. **Please note that when applying an urgent deprivation a standard authorisation request must be made at the same time.**
- 3.4 The responsibility for endorsing standard authorisations to deprive liberty will be with the respective Supervisory Body. Therefore, in Salford the following applies;
- **For all hospitals, the Supervisory Body is NHS Salford (Primary Care Trust).** The Standard authorisations will be endorsed by specified senior personnel. The current signatories are: **Alan Campbell:** Acting Locality Managing Director. **Andrew Clough:** Director Clinical Professional Leadership.
 - Signatories may change in agreement with the Primary Care Trust and Local Authority if the need arises.
 - **For all care homes, the Supervisory Body is Salford City Council (Local Authority).** Standard authorisations will be endorsed by specified senior personnel. The current signatories are: **Sue Lightup:** Strategic Director, Community, Health & Social Care Directorate. **David Entwistle:** Assistant Director, Community, Health and Social Care Directorate.
 - Signatories may change in agreement with the Local Authority and Primary Care Trust if the need arises.
 - Salford City Council and Salford Primary Care Trust have in place a Collaborative Working Agreement. This states that **ALL** requests for deprivation of liberty will be dealt with by Salford Adult Safeguarding Unit as the single point of entry in Salford.
 - The Co-ordinator for MCA/DOLS, Co-ordinator for Adult Safeguarding or nominated deputy will sign all forms, **except** authorisations to deprive people of liberty.
- 3.5 The Co-ordinator MCA/DOLS or MCA/DOLS Support Officer co-ordinate all requests for standard authorisations, reviews and ending of authorisations. They will ensure that the appropriate Supervisory Body (Local Authority or Primary Care Trust), responsible for considering requests for authorisations, commissions the required assessments and where **all** the six DOLS assessments (see section 7) agree process the appropriate documents and obtain signatures to authorise a deprivation of liberty. They will also arrange for access to Independent Mental Capacity Advocacy where required, arrange appointment of Relevant Person's Representatives where required, and distribute appropriate documentation to those concerned with each case. They will also undertake any other duties necessary in relation to the deprivation of liberty safeguards.
- 3.6 Where a person is classified as usually resident in one geographical area (the Supervisory Body) but is residing in a care home in another authority (the host Supervisory Body) and deprivation of liberty assessments are required the ADASS guidance will be followed. (Protocol for the Inter-Authority Management of Deprivation of Liberty Safeguards Applications).

- 3.7 Where a person is classified as usually resident in one geographical area (the Supervisory Body) but is receiving hospital care in another (the host Supervisory Body) and deprivation of liberty assessments are required the NHS Confederation guidance will be followed. (Protocol for the NHS Inter-Agency Management of Deprivation of Liberty Safeguards Applications).

4 Urgent Authorisation Procedure

- 4.1 A Managing Authority (care home or hospital) can authorise an urgent deprivation of liberty for themselves in the following specific situations. The first situation is where the Managing Authority has made an application for a standard authorisation but believes that the need for the person to be deprived of their liberty is so urgent that the deprivation needs to begin before the standard request has been processed. The other situation is where the circumstances of the person about to be deprived of their liberty have deteriorated to a point that the Managing Authority believes an urgent authorisation is necessary for **the person's safety**.
- 4.2 The maximum period that a Managing Authority can authorise an urgent deprivation of liberty is seven calendar days.
- 4.3 The Managing Authority must complete DOLS Form 1 which is available via Salford City Council website or the Department of Health Website (see 3.2) as well as a standard authorisation request using DOLS Form 4. The Managing Authority **must** contact the Adult Safeguarding Unit immediately when they put an urgent authorisation into force and request a standard authorisation. The contact number for the Adult Safeguarding Unit is 0161 212 4323 and 0161 212 5734. The Managing Authority should send the form through on the secure fax number 0161 212 4117 or email it to DOLS@salford.gov.uk . **It is the responsibility of the Managing Authority to ensure that all necessary documentation is completed.**
- 4.4 On receipt of the urgent authorisation the Co-ordinator MCA/DOLS or MCA/DOLS Support Officer will contact the Managing Authority and arrange the assessment process, which must be completed before the urgent authorisation expires.
- 4.5 In exceptional circumstances the Supervisory Body can authorise an extension of an urgent authorisation to enable the assessments to be completed, up to a maximum of seven calendar days. The DOLS Code of Practice gives guidance in Chapter 6 (6.20) regarding how and when an urgent authorisation can be extended.
- 4.6 If the Managing Authority requires an extension to the urgent authorisation they should complete DOLS Form 2 (available from Salford City Council or the Department of Health website or see 3.2) and submit this to the Co-ordinator MCA/DOLS at the Adult Safeguarding Unit for authorisation.
- 4.7 The Managing Authority is responsible for providing copies of completed urgent authorisation forms for the person deprived of their liberty and any Independent Mental Capacity Advocate (IMCA) involved.
- 4.8 The Managing Authority must do everything practical to explain to the person deprived of their liberty, both orally and in writing, what the effect of the urgent authorisation is and their right to apply to the Court of Protection for it to be terminated. The Managing Authority must also inform the person's family, friends and carers about the urgent authorisation so that they can support the person.

- 4.9 The Managing Authority must record in the person's health or social care records what steps they have taken to involve the person, family, friends, carers and anyone else with an interest, together with the views and details of any IMCA who has been appointed.

5 Extensions for Urgent Authorisations

- 5.1 Salford City Council or NHS Salford, via the Co-ordinator MCA/DOLS or designated colleagues within the Adult Safeguarding Unit, will consider extending urgent authorisations for deprivation of liberty for up to a further seven calendar days following a request from the Managing Authority using DOLS Form 2.
- 5.2 An extension will only be considered where:
- the Managing Authority has already made a request for a standard authorisation
 - there are exceptional circumstances and reasons why it has not yet been possible to make a standard authorisation
 - It is essential for the DOL to continue while the Supervisory Body makes its decision
 - Extensions will only be granted for exceptional reasons and will surround the assessment process in relation to best interest assessments. Salford City Council or NHS Salford will decide what constitutes an 'exceptional reason'. The Supervisory Body will review every request for an extension of an urgent authorisation to ensure that the person who has been deprived of their liberty is safeguarded.
 - An extension can only be granted once. This is stated in the DOLS Code of Practice (Chapter 6, 6.25).

6 Standard Authorisation Procedure

- 6.1 When making a request for a standard authorisation the Managing Authority which will be a care home or a hospital, must complete DOLS Form 4 Request for a standard authorisation. (This can be found on the Salford City Council internet or the Department of Health website or see 3.2)
- 6.2 The completed form must be sent on the day that the Managing Authority considers that someone residing on their premises will be subject to a deprivation of their liberty within the next 28 days.
- 6.3 The Managing Authority should send the request for authorisation to a secure fax at Salford Adult Safeguarding Unit on 0161 212 4117 or email DOLS@salford.gov.uk . The request for authorisation will be passed to the Co-ordinator for MCA/DOLS or designated deputy.
- 6.4 On receipt of the standard authorisation the Adult Safeguarding Unit will scrutinise the authorisation request – ensuring it is correctly completed. The Managing Authority will be contacted to discuss the situation further regarding the proposed restrictions of liberty imposed by the Managing Authority and gather any other relevant information.

- 6.5 The initial information gathering by the Supervisory Body must be completed within two working days of the receipt of referral from the care home or hospital Managing Authority. Where possible, contact will be made on the same day as the request is received.

7 The Assessments

- 7.1 The Co-ordinator MCA/DOLS, MCA/DOLS Support Officer or other member of the Adult Safeguarding Unit will arrange the following assessments;

- **Age Assessment:** (Form 5). This will normally be completed by a Best Interest Assessor (BIA) who meets with the criteria and undergone training approved by the Secretary of State. This assessment will form part of the BIA's main Best Interest Assessment (Form 10), but may be clarified at the information gathering stage by the Co-ordinator MCA/DOLS or MCA/DOLS Support Officer. This is '*an assessment, for the purpose of the deprivation of liberty safeguards, of whether the relevant person has reached age 18*'. (DOLS Code of Practice, p114)
- **Mental Health Assessment:** (Form 6). This will be completed by a Mental Health Assessor (MHA) who is a Section 12 approved doctor who has undertaken additional DOLS training and is registered via the Strategic Health Authority. It is '*an assessment, for the purpose of the deprivation of liberty safeguards, of whether a person has a mental disorder*.' (DOLS Code of Practice, p118)
- **Mental Capacity Assessment:** (Form 7). This assessment may be completed by the BIA or MHA. It is '*an assessment, for the purpose of the deprivation of liberty safeguards, of whether a person lacks capacity in relation to the question of whether or not they should be accommodated in the relevant hospital or care home for the purpose of being given care or treatment*.' (DOLS Code of Practice, p118)
- **No Refusals Assessment:** (Form 8). This will usually be completed by the BIA. This is '*an assessment, for the purpose of the deprivation of liberty safeguards, of whether there is any other existing authority for decision-making for the relevant person that would prevent the giving of a standard deprivation of liberty authorisation. This might include any valid advance decision, or valid decision by a deputy or donee appointed under a Lasting Power of Attorney*.' (DOLS Code of Practice, p118)
- **Eligibility Assessment:** (Form 9). This will be completed by the Mental Health Assessor. In exceptional circumstances (which will be decided by the Supervisory Body) it may be completed by a BIA who is also an Approved Mental Health Professional (AMHP). It is '*an assessment, for the purpose of the deprivation of liberty safeguards, of whether or not a person is rendered ineligible for a standard deprivation of liberty authorisation because the authorisation would conflict with requirements that are, or could be, placed on the person under the Mental Health Act (1983)*.' (DOLS Code of Practice, p116)
- **The Best Interests Assessment:** (Form 10). Will always be completed by a BIA. This is '*an assessment, for the purpose of the deprivation of liberty safeguards, of whether deprivation of liberty is in a detained person's best interests, is necessary to prevent harm to the person and is a proportionate response to the likelihood and seriousness of that harm*.' (DOLS Code of Practice, p114)

- All completed assessments must be returned to the MCA/DOLS Support Officer or Co-ordinator MCA/DOLS at Salford Adult Safeguarding Unit by the fax or email (see 6.3) or in person as soon as they are completed by the assessors.

8 Outcome of Assessments

- 8.1 If **all** 6 of the assessments indicate that depriving the person of their liberty is in their best interests the Adult Safeguarding Unit (DOLS team) will ensure that all paperwork is completed using the Department of Health Guide 'Forms & Record Keeping', Mental Capacity Act (2005), Deprivation of Liberty Safeguards and the relevant Codes of Practice to ensure compliance. The BIA will decide on the length of the authorisation.
- 8.2 The authorisation assessment process for a standard request for deprivation must not exceed twenty one calendar days from the date the request was received by the Co-ordinator MCA/DOLS or members of the Adult Safeguarding Unit. Response times will be monitored by the Co-ordinator MCA/DOLS or designated other to ensure compliance within the timescales specified by the Code of Practice (2008).
- 8.3 For clarification of who signs authorisation requests in Salford, see 3.4
- 8.4 The Best Interests Assessor (BIA) will identify and recommend a person to be the Relevant Person's Representative during their assessments. If the Best Interests Assessor is unable to identify an appropriate individual, an Independent Mental Capacity Advocate (IMCA) will be instructed to represent the relevant person until a representative can be appointed. The MCA/DOLS Co-ordinator, MCA/DOLS Officer or designated colleagues of the Adult Safeguarding Unit will ensure that the Relevant Person's Representative and where applicable the Independent Mental Capacity Advocate are appointed.
- 8.5 It is important that the Relevant Person's Representative has sufficient contact with the person to ensure that the relevant person's best interests are being safeguarded. In order to fulfil their role, the Relevant Person's Representative will need to be able to have regular face to face contact with the relevant person. The Managing Authority should accommodate visits by the Relevant Person's Representative at reasonable times. The name of the Relevant Person's Representative or Independent Mental Capacity Advocate should be recorded by the Managing Authority in the relevant person's health and social care records.
- 8.6 The Co-ordinator MCA/DOLS, MCA/DOLS Support Officer will ensure that the Relevant Person's Representative is informed of sources of support and information available to help them in their role, including how to access the Independent Mental Capacity Advocacy Service locally.
- 8.7 If the requirement for an authorisation is not met, the MCA/DOLS Co-ordinator will complete and sign Form 13 before distributing it to the relevant people specified on the form.

9 **Review Process and Ending an Authorisation**

9.1 A standard authorisation can be reviewed at any time. The responsibility to arrange and undertake the review(s) rests with the Supervisory Body; this is the Primary Care Trust or the Local Authority. However, the Supervisory Body is legally required to carry out a review where the Relevant Person, their Relevant Person's Representative, Independent Mental Capacity Advocate or Managing Authority (hospital or care home) requests one. The DOLS Code of Practice (Chapter 8) provides guidance on the process of review and states the statutory grounds for carrying out a review. If the statutory grounds are met, the Supervisory Body must carry out a review of the authorisation.

9.2 Statutory grounds for a review of authorisation are:

'The relevant person no longer meets the age, no refusals, mental capacity, mental health or best interests requirements.

The relevant person no longer meets the eligibility requirement because they now object to receiving mental health treatment in hospital and they meet the criteria for an application for admission under Section 2 or Section 3 of the Mental Health Act (1983)

There has been a change in the relevant person's situation and, because of the change, it would be appropriate to amend an existing condition to which the authorisation is subject, delete an existing condition or add a new condition.

The reason(s) the person now meets the qualifying requirement(s) is (are) different from the reason(s) given at the time the standard authorisation was given.'

Taken from the DOLS Code of Practice, p86-87

9.3 A Managing Authority, which is a care home or a hospital, must use DOLS Form 19 (available on Salford City Council website, the Department of Health website or see 3.2) to request a review. They will use this when it appears that one or more of the qualifying requirements are no longer met, or may not be met in the future. All requests in Salford are sent to the Adult Safeguarding Unit (0161 212 4323 or DOLS@salford.gov.uk).

9.4 The Supervisory Body (local authority or PCT) will respond by clarifying that a review will be carried out using DOLS Form 20 this will be sent to the Relevant Person, their representative (which will be the person called the Relevant Person's Representative or it may be an Independent Mental Capacity Advocate and the Managing Authority (hospital or care home). This will be sent out as soon as reasonably possible.

9.5 Deprivation of Liberty can be ended before a formal review. An authorisation **permits** a Deprivation of Liberty; it does not mean a person **must be** deprived of their liberty where circumstances no longer necessitate it. If a Managing Authority (hospital or care home) decides that a deprivation of liberty is not needed any longer they must end it immediately. They can do this by adjusting the Care Plan or implementing whatever change they consider appropriate. The Supervisory Body (local authority or PCT) will then review and if appropriate, formally terminate the authorisation using the relevant forms.

- 9.6 When an authorisation ends, the Managing Authority, which is a hospital or care home, cannot lawfully continue to deprive the person of their liberty. If the Managing Authority considers that the person still needs to be deprived of their liberty they must request a further standard authorisation to begin immediately after the expiry of the existing authorisation. There is no time limit on how far in advance of the expiry date a Managing Authority can apply for a renewal.
- 9.7 The process for renewing a standard authorisation to deprive someone of their liberty is the same as that for obtaining the original one. However, the need to instruct an Independent Mental Capacity Advocate should not arise as the person should have a representative already appointed.
- 9.8 When the authorisation has ended the Supervisory Body has a responsibility to inform certain people involved of this. These people are the relevant person, their representative, the Managing Authority and anyone named in the Best Interest Assessor's report that has been consulted by them during the assessment process.

10 **Operational Standards for Managing Authorities (MA) in Salford**

- 10.1 All Managing Authorities (Care homes and hospitals) in Salford need to ensure their care planning processes incorporate consideration of whether a person has capacity to consent to the services which are to be provided and whether their actions are likely to result in a Deprivation of Liberty.
- 10.2 All Managing Authorities (care homes and hospitals) in Salford should be able to provide evidence of assessment of a person's capacity in a specific situation. This should be recorded within the framework of the Mental Capacity Act (2005) and using the language of the Act in assessment. See MCA Code of Practice Chapter 4, 4.10.
- 10.3 A Managing Authority must not, except in an emergency situation, deprive a person of their liberty unless a standard authorisation has been given by either Salford City Council (for the care home) or NHS Salford (for the hospital) for that specific situation and it is in force. All requests for authorisation go to the Adult Safeguarding Unit (see 6.3). There is a Collaborative Working Agreement between Salford City Council and NHS Salford with the local authority taking the lead.
- 10.4 In circumstances that a Managing Authority (care home or a hospital) considers so urgent that a Deprivation Of Liberty needs to begin immediately they can apply an authorisation to themselves. However, a standard request to deprive the person of their liberty should be completed and sent to the Supervisory Body at the same time as the urgent authorisation paperwork is completed and sent to the Supervisory Body. In this case a standard authorisation must be obtained within seven calendar days. This means that all six assessments must be carried out by the Best Interest Assessor and Mental Health Assessor within this time period.
- 10.5 It is the responsibility of the care home or hospital as the Managing Authority to request an authorisation to deprive someone of their liberty and to implement the outcomes and recommendations made by the Supervisory Body. The Managing Authority must seek authorisations where they genuinely believe it is in the person's best interests to deprive that person of their liberty to keep them safe.

- 10.6 It is not required to request an authorisation to deprive a person of their liberty for all admissions to hospitals or care homes simply because the person concerned lacks capacity to decide whether to be admitted. If in doubt, contact the Co-ordinator MCA/DOLS (see 6.3).

11 Operational Standards for Salford City Council and NHS Salford (Supervisory Body)

- 11.1 The Adult Safeguarding Unit will receive all applications, correspondence and any other contact regarding Deprivation of Liberty Safeguards. The local authority will co-ordinate all Deprivation Of Liberty Safeguards requests as the one point of entry for all Managing Authorities (care home or hospital) in Salford. This has been agreed in a Collaborative Working Agreement.
- 11.2 A Deprivation of Liberty cannot lawfully begin until the Supervisory Body (Local Authority or Primary Care Trust) has given authorisation, or the Managing Authority (care home or hospital) has given itself an urgent authorisation.
- 11.3 Before a decision to authorise a deprivation of liberty or not, the Supervisory Body must have copies of all 6 assessments as proof whether the relevant person meets the qualifying requirements or not. The Deprivation must be necessary to protect the person from harm, not others from harm and to be in their best interests. Authorisation will not be given unless all qualifying requirements are met.
- 11.4 The Supervisory Body will ensure that the Best Interest Assessors and Mental Health Assessors have the skills, qualifications, experience and training to be able to perform their role.
- 11.5 The duration of a deprivation will always be specified. It cannot exceed 12 months and cannot be longer than the period of time identified by the Best Interest Assessor. The Supervisory Body will inform of its decision in writing following requirements identified in the Act, the Code of Practice and the Department of Health Forms and Record Keeping Guidance.
- 11.6 Conditions will be attached to an authorisation where the Supervisory Body considers it appropriate to do so. Any condition will be directly related to the Deprivation of liberty.
- 11.7 Where an authorisation to deprive a person of their liberty is refused, the Co-ordinator MCA/DOLS and Adult Safeguarding Co-ordinator will discuss whether Adult Safeguarding procedures should be triggered. A Managing Authority (care home or hospital) cannot deprive a person of their liberty if the authorisation has been refused – they must take immediate action to ensure they comply with the law.
- 11.8 The Supervisory Body will appoint a relevant persons representative when one has been identified by the best interest assessor. Where this is not possible an Independent Mental Capacity Advocate will be appointed.
- 11.9 When an authorisation is in force, the relevant person, their representative and any Independent Mental Capacity Advocate representing the person has the right to request a review. They should follow procedure 9 of this document.

12 Joint Operational Standards for Managing Authorities (care homes and hospitals) and the Supervisory Body (Salford City Council and NHS Salford) via the Adult Safeguarding Unit.

- 12.1 The above bodies are required to adhere to the Mental Capacity Act (2005) and the guidance laid out in the Mental Capacity Act Code of Practice and the DOLS Code of Practice. Also in relation to points made in this document.
- 12.2 Any person engaged in caring for the person, anyone named by them as a person to consult, and anyone with an interest in the person's welfare will be consulted during the decision making process.
- 12.3 An authorisation that deprives a person of their liberty may be challenged by the relevant person, or by their representative or Independent Mental Capacity Advocate or by application to the Court of Protection. Managing Authorities (care homes and hospitals) and Supervisory Bodies (Local Authority and Primary Care Trust) must try to resolve any disputes locally and informally where possible. No one should be forced to apply to the Court of Protection because of failure or unwillingness to engage in a constructive discussion.
- 12.4 If the Court of Protection is asked to decide on a case where there are questions whether a deprivation of liberty is lawful, or should continue, the care home or hospital as the Managing Authority should continue with its current care regime where it is necessary for the purpose of giving the person life sustaining treatment or to prevent a serious deterioration in their condition while the Court makes a decision.
- 12.5 The process of assessing and authorisation a deprivation of liberty will be clearly recorded, regularly monitored and audited by the Co-ordinator MCA/DOLS and held at the Adult Safeguarding Unit. This information will be shared with the inspection bodies as required.

13 What Constitutes a Deprivation of Liberty?

- 13.1 There is no simple definition of a deprivation of liberty. This policy is intended to offer guidance for people when considering whether a restriction of a person's liberty may be turning into a deprivation of liberty. It should be remembered that guidance also exists in the Codes of Practice for the Mental Capacity Act (2005) and Deprivation of Liberty Safeguards (2008). However, this document is specifically aimed at situations which may arise in Salford.
- 13.2 Social and Healthcare professionals are advised to adhere to the above named Codes of Practice which provide guidance on determination of whether a deprivation of liberty is occurring by examples of existing case law or any new case law that arises.
- 13.3 The Code of Practice suggests that the difference between restriction and deprivation of liberty is one of degree and intensity. It may be helpful for colleagues to envisage a 'sliding scale' which moves from 'restriction' such as a locked door on its own, through to 'deprivation' such as the case of HL v The United Kingdom.
- 13.4 It is vital that each case is assessed on its own unique circumstances as no two cases will be exactly the same.

- 13.5 In the case law that has come from the Courts so far it is possible to identify factors that can be relevant when trying to assess whether a situation has moved to more than restraint and toward amounting to a deprivation of liberty:

'Restraint is used, including sedation, to admit a person to an institution where that person is resisting admission.

Staff exercise complete control over assessments, treatment, contacts and residence.

A decision has been taken by the institution that the person will not be released into the care of others, or permitted to live elsewhere, unless the staff in the institution consider it appropriate.

A request by carers for a person to be discharged into their care is refused.

The person is unable to maintain social contacts because of restrictions placed on their access to other people.

The person loses autonomy because they are under continuous supervision and control.'

Taken from the DOLS Code of Practice, Chapter 2, 2.5

This list is for example purposes only, a Managing Authority may identify other factors which may constitute a deprivation of liberty. It is not a threshold. If in doubt the Managing Authority should consider requesting a standard authorisation.

14 How Can a Deprivation of Liberty be Identified?

- 14.1 When attempting to determine whether a deprivation of liberty is occurring or likely to occur, it is vital that all facts in a particular case are considered. The following points below should be considered.
- 14.2 What measures are being taken in relation the individual? What is going on in their life? When are measures required? For how long? What are the effects of any restraints or restrictions on the person? Why are they necessary? What is the outcome?
- 14.3 What are the views of the relevant person? Views of family? Views of friends? Views of carers? Views of advocates? Do any of these people object to what is happening to the relevant person?
- 14.4 Exactly how are restrictions or restraints implemented? Are they starting to look more like a deprivation?
- 14.5 Are there any least restrictive options in the care of this person? Could the least restrictive way of delivering care or treatment avoid depriving the person of their liberty altogether?
- 14.6 Is there a cumulative effect of the restrictions pointing toward a deprivation of liberty for this person – but if looked at individually they would be a restriction?

If in doubt, please consult with colleagues or line management. Or contact the Co-ordinator MCA/DOLS to discuss further on 0161 212 4323 or 07971 177031 or DOLS@salford.gov.uk

15 How to reduce the risk of Deprivation of Liberty occurring

- 15.1 This can be achieved by minimising the restrictions imposed upon the relevant person and ensuring that they are included in discussions regarding their care and treatment as much as possible. This includes involving the person's family, friends, carers or advocate.
- 15.2 Ensure that all decisions taken are recorded appropriately in accordance with the MCA Code of Practice guidance and Salford Guidance "Mental Capacity Act (2005) A multi agency policy statement and practice guide".
- 15.3 Follow established good practice regarding care planning. Support the person to retain contact with family, friends and carers. Review care on a regular basis. Recording of risk along with any actions/intervention considered necessary to reduce particular elements of risk are clearly documented and reflected in the care plan.
- 15.4 Make a thorough assessment of whether the person lacks capacity to decide whether or not to accept the care or treatment proposed, in line with the principles of the Mental Capacity Act (2005). Ensure you record the outcome using the language of the Act.
- 15.5 Where independent advocacy is available, this can provide an independent source of support for the person. This advocacy will not necessarily be statutory advocacy (an example of statutory advocacy is the Independent Mental Capacity Advocacy service) in this case. For assistance in identifying advocacy support for the person or their family contact the Co-ordinator MCA/DOLS 0161 212 5734 or DOLS@salford.gov.uk

16 What does the Mental Capacity Act (2005) mean by 'restraint'?

- 16.1 The Act states in section 6(4) that someone is using restraint if they use force, or the threat of force, to make someone do something that they are resisting or restrict a person's freedom of movement, whether they are resisting or not.
- 16.2 The Mental Capacity Act Code of Practice contains guidance regarding restraint in Chapter 6 and states in 6.41 that '*the person taking action must reasonably believe that the restraint is necessary to prevent harm to the person who lacks capacity and the amount or type of restraint used and the amount of time it lasts must be a **proportionate** response to the likelihood and seriousness of harm.*' Appropriate use of restraint falls short of depriving someone of their liberty.
- 16.3 For example, if you prevented a person from leaving a care home or a hospital ward unaccompanied because there is a risk that they would try to cross a road in a dangerous way it is likely to be seen as a **proportionate** restriction or restraint to prevent harm to the person. The same could be said for locking a door to guard against immediate harm of a person wandering into a busy road.

- 16.4 Within a **hospital** if a person needs to be restrained when they are being considered for admission to a hospital for mental health treatment it is likely to indicate that they are objecting to the treatment or being in **hospital**. The hospital should then consider whether the need for restraint means the person is objecting. In that case the person may be eligible for detention under the Mental Health Act (1983) rather than using the Deprivation of Liberty Safeguards.
- 16.5 Transporting a person who lacks capacity from their home, or another location TO a hospital or care home will not normally amount to a deprivation of their liberty. Even if the person may be deprived of their liberty within the care home or hospital the journey itself is unlikely to constitute a deprivation. People can usually be lawfully taken TO a hospital or care home under the wider provisions of the Mental Capacity Act (2005) as long as it is considered that being in that hospital or care home will be in their best interests. (MCA (2005) S5 & S6).
- 16.6 If the person in hospital or a care home needs treatment and would need to be restrained for a procedure to take place, this is likely to indicate that they are objecting to the care/treatment. The person should have their capacity assessed under the Mental Capacity Act (2005) to determine their capacity at this specific time. Remember! You must assume the person has capacity until proved otherwise.
- 16.7 If the person is deemed not to have capacity to make a decision about proposed care or treatment OR to remain in hospital or the care home AND needs to be detained by restrictions imposed which could amount to a deprivation of liberty, the Managing Authority should consider whether it needs to issue an Urgent authorisation and request a Standard Authorisation.
- 17 **What to do if you think someone may be deprived of their liberty without an authorisation**
- 17.1 It is considered a very serious issue to deprive someone of their liberty without a formal authorisation if the person lacks the capacity to consent to treatment and/or care provided and the restriction(s) of liberty imposed upon them may amount to a deprivation of liberty.
- 17.2 If any member of staff within Salford City Council or NHS Salford or a concerned member of the public considers that a person is being deprived of their liberty without a formal authorisation they should contact the Co-ordinator MCA/DOLS or other member of the Adult Safeguarding Unit as soon as possible on 0161 212 4323.
- 17.3 If the conclusion following notification to the Co-ordinator MCA/DOLS and the initial discussion is that the relevant person is being deprived of their liberty unlawfully this should result in a change in their care arrangements, or an application for a Deprivation of Liberty authorisation must be made.

- 18 **Guidance for reporting concerns and for assessing whether an unauthorised Deprivation of Liberty is occurring**
- 18.1 If the relevant person, relative(s), carer(s), friend(s), professional(s) or advocate(s) believe that a person is being deprived of their liberty without a formal authorisation they should report their concerns to the care home or hospital (Managing Authority). There is a standard letter available for this which can be downloaded from the department of health website by searching for 'DOLS forms'. Or contact the Co-ordinator MCA/DOLS or other member of the Adult Safeguarding Unit as soon as possible on 0161 212 4323 / 212 5734.
- 18.2 In the first instance the concerned person should ask the Managing Authority (care home/hospital) to apply for a standard authorisation if they intend to continue with the existing care regime. They should ask that this is done immediately. The Managing Authority (care home or hospital) must respond within 24 hours.
- 18.3 It may be possible for the Managing Authority to resolve the situation informally with the concerned person. For example, by making amendments to the relevant person's care plan and care regime to reduce the extent of the restrictions placed upon the relevant person which removes concerns around a deprivation of liberty occurring.
- 18.4 If the Managing Authority is unable to resolve the issue with the concerned person they must apply an urgent authorisation and forward the form for this along with a form requesting a standard authorisation to the Adult Safeguarding Unit on 0161 212 4117 which is a secure fax. Alternatively it can be emailed to DOLS@salford.gov.uk.
- 18.5 If a concerned person has raised the issue of deprivation of liberty with a Managing Authority and they do not apply for an authorisation, the concerned person can ask the Supervisory Body (in Salford the contact will be via the Adult Safeguarding Unit for the Local Authority and the Primary Care Trust) to decide whether a deprivation of liberty is occurring.
- 18.6 The concerned person should inform the Supervisory Body via the Co-ordinator MCA/DOLS, the name of the person they are concerned about and the name of the care home or hospital where the relevant person is at that moment. The concerned person should explain why they think the person is being deprived of their liberty.
- 18.7 The Co-ordinator MCA/DOLS acting as the Supervisory Body will instruct a suitably qualified Best Interests Assessor to carry out a best interests assessment to ascertain whether the person is being deprived of their liberty. However, an assessment will NOT be arranged if the situation is covered by Chapter 9, 9.5 of the DOLS Code of Practice.
- 18.8 The Supervisory Body (local authority or primary care trust) will record the outcome and the reason for their decision using the forms provided by the Department of Health in the Forms and Record keeping Guidance.
- 18.9 If the outcome of this assessment is that there is an unauthorised deprivation of liberty, the full assessment process will be completed. Unless the Managing Authority changes the care arrangements so that it is clear that there is no longer a deprivation taking place. This assessment may be carried out by a different Best Interests Assessor.
- 18.10 If the Managing Authority (care home or hospital) decides that the need to continue the Deprivation of Liberty is so urgent the care regime should continue whilst assessments are carried out, it MUST give itself an urgent authorisation and apply for a standard authorisation. Assessments will be completed within 7 calendar days.

18.11 If the concerned person does not accept the outcome of their request for an assessment, they have the right to apply to the Court of Protection for it to hear their case.

19:00 **Failure to Comply with Legislation**

19.1 The Care Quality Commission are the independent regulator of health and social care in England. They will monitor the Mental Capacity Act (2005) and Deprivation of Liberty Safeguards in Managing Authorities (hospitals and care homes) and Supervisory Bodies (local authority and PCT). They will report their findings to parliament in an annual report.

19.2 The Care Quality Commission do not have duty or powers to enforce the Mental Capacity Act, but they can set improvement actions and compliance actions under the Health and Social Care Act (2008) (Regulated Activities) Regulations 2010.

19.3 They will check the number of notifications providers have submitted and the outcomes. Managing Authorities must inform the Care Quality Commission of any Deprivations of Liberty authorisations and the outcome of any assessments eg did the authorisation go ahead or not, and the reason for it.

19.4 Detailed guidance for providers can be found on the Care Quality Commission website www.cqc.org.uk

19.5 The Court of Protection was established by the Mental Capacity Act (2005). It has the same powers, rights, privileges and authority as the High Court. To comply with Article 5 (4) of the European Convention on Human Rights (ECHR) anybody deprived of their liberty in accordance with the DOLS safeguards is entitled to access a court that can review the lawfulness of the deprivation. The Court of Protection is the specialist court for all issues relating to people who lack capacity to make specific decisions.

19.6 Services no longer register as 'care homes' or 'hospitals' under the Health and Social Care Act, they now register to carry on 'regulated activities'. However, the terms 'care home' and 'hospital' continue to be used for Mental Capacity Act purposes.

19.7 Providers and managers of locations that do not meet the above definition of a 'care home' or 'hospitals (Managing Authority) cannot deprive a person of their liberty under the Mental Capacity Act (2005) Deprivation of Liberty Safeguards. It is an incompatibility with the Act and an application to the Court of Protection should be made.

19.8 Failure to comply with legislation could result in serious legal consequences and costs for the organisations involved.

20.0 **Useful resources**

MCA/DOLS Co-ordinator elly.davis@salford.gov.uk or DOLS@salford.gov.uk

Forms and guidance <http://www.salford.gov.uk/mentalcapacityact.htm> or www.dh.gov.uk

Salford City Council www.salford.gov.uk

Salford Primary Care Trust www.salford.nhs.uk

MCA Code of Practice at <http://www.justice.gov.uk/guidance/mental-capacity.htm>

DOLS Code of Practice at <http://www.publicguardian.gov.uk/docs/draft-dols-code.pdf>