



Policy:

NPCS 003 Mental Capacity Act 2005 Deprivation of Liberty Safeguards (DOLS)

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Summary of policy

This policy gives guidance in relation to the current law and statutory guidance regarding DOLS. It aims to help staff identify when a person may be being deprived of their liberty and outlines what steps staff should take if they believe a person is being deprived of their liberty but no legal authority is in place to authorise this.

The policy highlights the importance of ensuring that people's human rights are being considered, promoted and safeguarded. It also encourages arrangements for people's care and support to be delivered in a way which maximises independence and freedom whilst balancing the meeting of needs and managing of risk.

Target audience	All staff
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Keywords	DOLS, deprivation, liberty, standards, safeguards
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Storage & Version Control

Version 9 of this policy is stored and available through the SHSC intranet/internet. This version of the policy supersedes the previous version (V8 October 2021). Any copies of the previous policy held separately should be destroyed and replaced with this version.

Version Control and Amendment Log

Version No.	Type of Change	Date	Description of change(s)
6.1	Initial draft	05/2017	<p>Policy amended on recommendation of internal audit:</p> <ul style="list-style-type: none"> • Flowchart clarified • Table – DoLS not granted added • Para 3.1 – definition of mental disorder • Pare 5.3 – managers duty to maintain DoLS register and nominate a deputy • Para 6.1 – rewording of the 6 requirements • Para 6.9.2 – amended guidance re death in state detention • Para 8 – clarification of training requirements and resources • Para 9 – audit and monitoring process developed
7	Ratification / issue	11/2017	<ul style="list-style-type: none"> • Clarifies what happens after a DoLS authorisation is not granted, and stipulates that a nominated deputy must be in place in the absence of the person normally responsible for actions undertaken in respect of this policy.
8	Routine review	10/2021	<ul style="list-style-type: none"> • Policy transferred to new SHSC policy template • Change of lead executive director • Summary of policy added to front page • Para 7.3 added to outline what steps need to be taken should there be a difference of opinion between professionals re. whether DOLS or Mental Health Act should be used • Para 7.12 updated with latest web address to the Local Authority DOLS team • Contents pages amended
9	Routine review	Jan 2025	<p>Significant changes made to reflect no longer integrated with Sheffield City Council.</p> <ul style="list-style-type: none"> • New flow charts added • Introduction re-written • Emphasis added about human rights and staff responsibilities • Latest position with respect of Liberty Protection Safeguards added • Scope of policy widened to ensure all staff are aware of their responsibilities to act if they identify

			<p>a DOL taking place</p> <ul style="list-style-type: none"> • Definitions section added to and reworded • Detail of policy rewritten; additional guidance to interpret the 'acid test' added • Interplay between MHA and DOLS rewritten; new flow chart added to help explain process • Added information about whether DOLS or MHA is least restrictive • Provision of medical treatment to those subject to DOLS rewritten • Procedure section rewritten • Links to Local Authority updated • Process to respond to unauthorised DOLS added – incident reporting added • Added clarification about transferability of DOLS • Leave arrangements for those subject to DOLS added • Section in respect of the Relevant Persons Representative updated • Links to CQC updated • DOLS forms removed given they can change
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Contents

Section		Page
	Version Control and Amendment Log	3
	Flow Chart	5
1	Introduction	8
2	Scope	10
3	Purpose	10
4	Definitions	10
5	Details of the Policy	12
6	Duties	17
7	Procedure	15
8	Development, Consultation and Approval	31
9	Audit, Monitoring and Review	32
10	Implementation Plan	33
11	Dissemination, Storage and Archiving (Control)	34
12	Training and Other Resource Implications	34
13	Links to Other Policies, Standards, References, Legislation and National Guidance	34
14	Contact details	34
	APPENDICES	
	Appendix 1 – Equality Impact Assessment Process and Record for Written Policies	35
	Appendix 2 – New/Reviewed Policy Checklist	36
	Appendix 3 – Deprivation of Liberty Safeguards Audit Form	37

Flowcharts

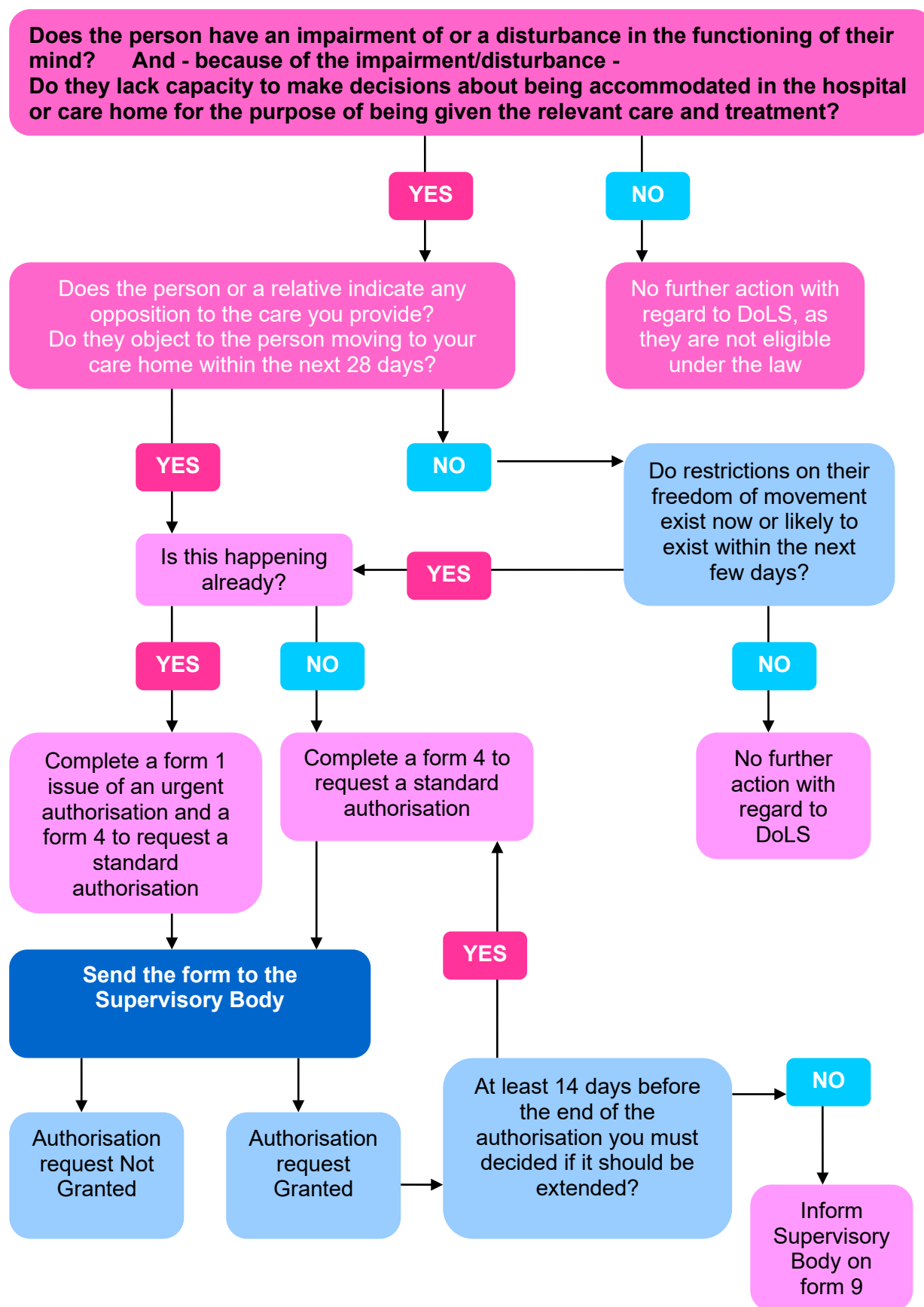


Figure 1: High level overview of DOLS process

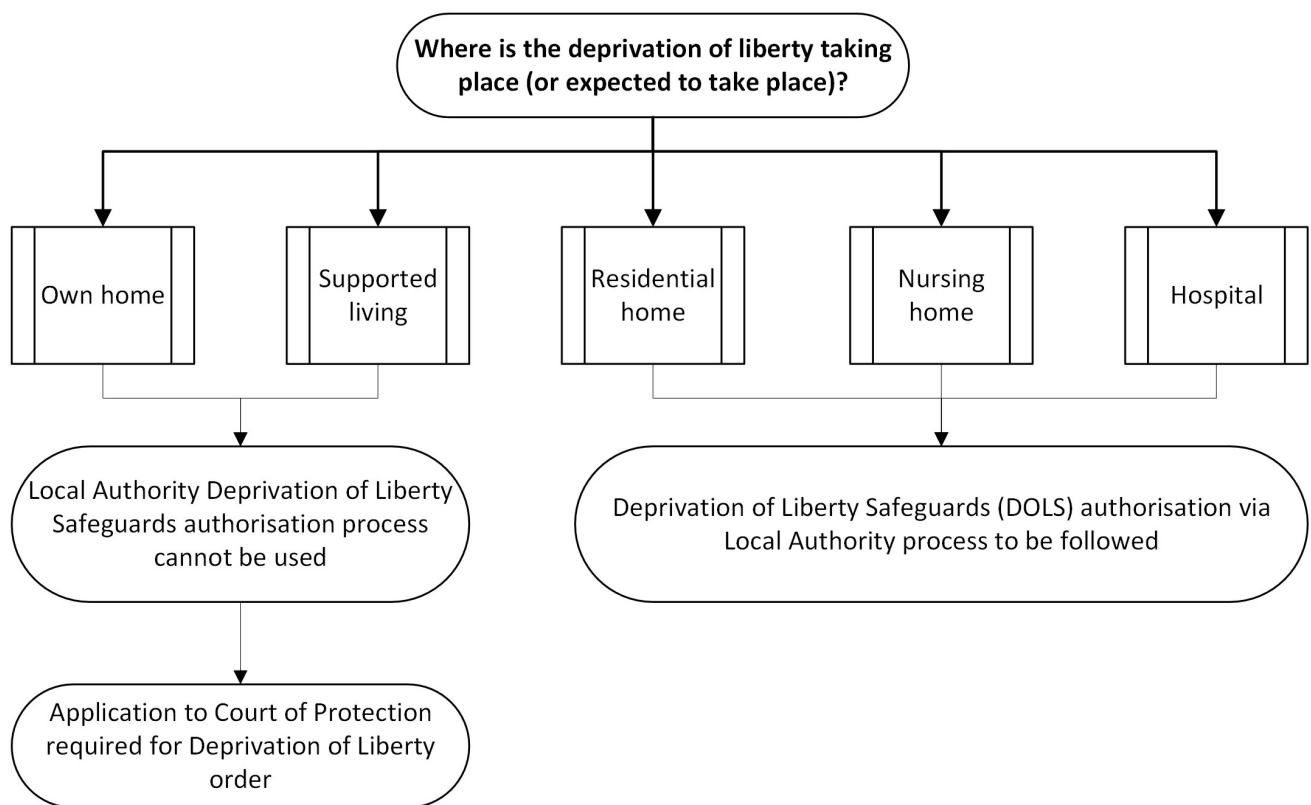


Figure 2: The different legal processes which exist that can authorise a deprivation of liberty for a person with a mental disorder

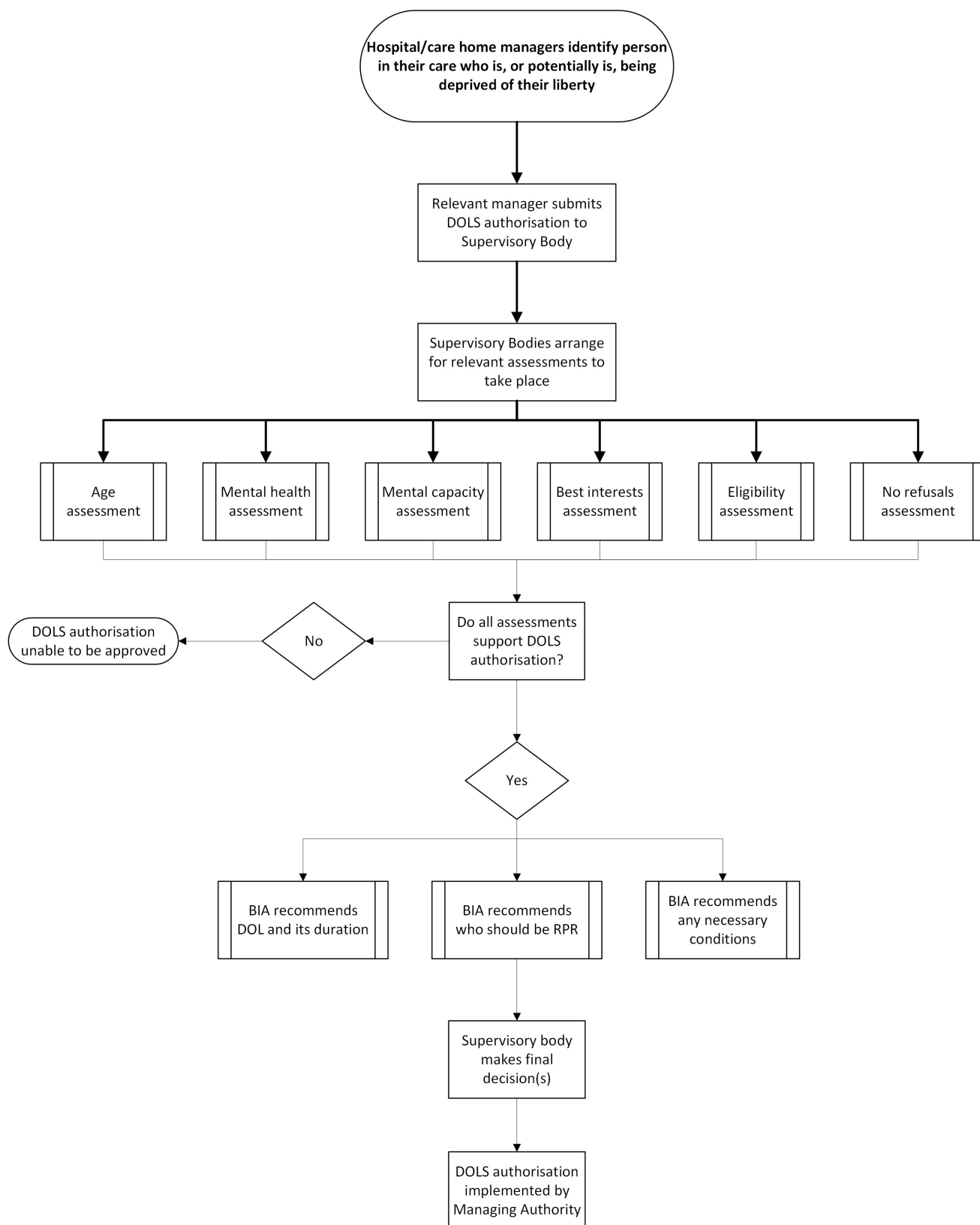


Figure 3 – Showing DOLS assessment process including assessment types needed

1. Introduction

- 1.1 Circumstances may arise when a person needs to be provided with care and support under conditions which amount to a deprivation of their liberty.
- 1.2 Article 5 European Convention on Human Rights (ECHR) states that all individuals have the right to liberty and security of person. It goes on to emphasise that:
- no person should be deprived of their liberty unless certain grounds are met, and
 - if a person is deprived of their liberty, it must be authorised by an appropriate legal process.
- 1.3 There are 3 main legal processes which could potentially be used to deprive a person of their liberty on the grounds of having an 'unsound mind'. These are set out in the diagram below:

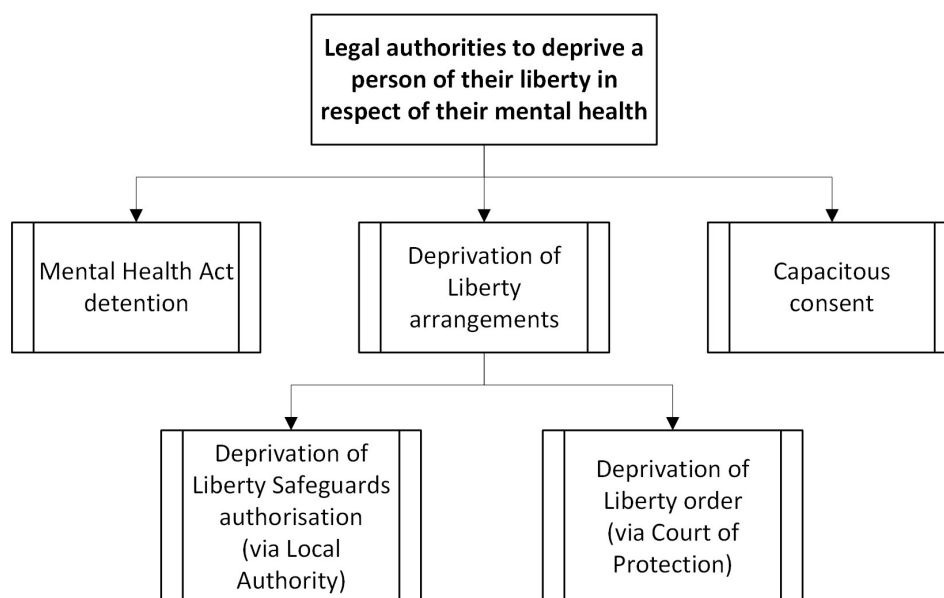


Figure 4: Showing the different legal authorities which exist where a person can be deprived of their liberty for reasons related to mental disorder

- 1.4 This policy is specifically in respect of the Deprivation of Liberty Safeguard arrangements.
- 1.5 This policy will not focus, in any depth, upon the Mental Health Act (MHA). There will, however, need to be some references to the MHA and staff need to be mindful that detention under the MHA is one of the legal means by which a person with a mental disorder can be deprived of their liberty.
- 1.6 Readers should note that the MHA is a different legal process with different eligibility criteria. It is important to not confuse a deprivation of liberty via the DOLS arrangements with deprivation of liberty arising from the MHA.
- 1.7 The Deprivation of Liberty Safeguards arrangements arise from powers granted under the Mental Capacity Act 2005. The arrangements consist of DOLS authorisations and DOLS orders.
- 1.8 DOLS authorisations arise from authorisations granted by Local Authorities. These authorisations are in respect of individuals who are deprived of their liberty in a hospital or residential home (which includes nursing homes).

- 1.9 A separate legal process, where a DOLS order is considered and granted, is where a DOL is approved by the Court of Protection. DOLS orders are usually considered and granted by the Court of Protection when a deprivation of liberty is taking place in a location which falls outside of the Local Authority authorisation authority ie. is not in a hospital or residential/nursing home. This means that if a person is being deprived of their liberty in locations such as the person's own home or supported living, a DOL would have to be authorised by means of a DOLS court order, and not by applying to the Local Authority.
- 1.10 The third route by which a person could be lawfully deprived of their liberty is that where a person gives capacitous consent. In other words, if a person has mental capacity to consent to being cared for/supported under conditions which deprive them of their liberty, then such a care plan can be implemented. It is essential, however, that in cases such as these clear assessments are documented and the person's mental capacity is reviewed on a frequent basis.
- 1.11 Given that the Deprivation of Liberty Safeguards arrangements are legal processes which allow for a person to be deprived of their liberty, they must be complied with. Failure to comply with the DOLS arrangements or follow their due processes may call into question the lawfulness of that DOL. In turn, this could mean that both staff and the Trust are in breach of the European Convention of Human Rights (ECHR).
- 1.12 The term 'deprivation of liberty' is one that has often been open to interpretation and its meaning has often been considered by the Courts. In March 2014, however, the Supreme Court delivered a significant legal judgment in respect of how a DOL is defined.
- 1.13 The legal definition of a DOL, which arose from the Supreme Court judgment, is often referred to as being the 'acid test'. In brief, the acid test means that if a person is subject to continuous care and control, and not free to leave, then a deprivation of liberty is occurring, and an appropriate legal authority must be in place which permits this.
- 1.14 Depriving any person of their liberty is a serious matter and such decisions should never be taken lightly. However, if a person needs to have a deprivation of liberty authorised by means of the DOLS arrangements, this should not be viewed as some type of 'failure'. The DOLS arrangements acknowledge that circumstances arise where some vulnerable adults need to be deprived of their liberty because it is in their best interests, is necessary, and is proportionate to the risks. Following DOLS processes means the rights of those being deprived of their liberty are being promoted and protected.
- 1.15 This policy should be read alongside the Mental Capacity Act 2005, the Mental Capacity Act 2005 Code of Practice, and the Deprivation of Liberty Safeguards Code of Practice (2008). The policy is not a substitute for legislation or the associated Codes of Practice.

Liberty Protection Safeguards (LPS)

- 1.16 Owing to difficulties nationally with the DOLS arrangements, the abolition of DOLS arrangements and introduction of new Liberty Protection Safeguards (LPS) was expected to have taken place. At the time of writing, LPS appears to be 'on hold' and there are no clear indications that LPS implementation will still go ahead. It is therefore important to stress that current practice must be in keeping with the pre-

existing DOLS arrangements and any documents/guidance on the internet about Liberty Protection Safeguards (LPS) are not live.

2. Scope

This policy has Trustwide scope.

Whilst there will be some policy sections which are more applicable to some services than others, this policy applies to all staff across inpatient, community and the Trust's residential services. This means that this policy's scope includes Beech, Birch Avenue and Woodland View.

A person can only be deprived of their liberty, via the DOLS arrangements, if they are aged 18 or above. Whilst SHSC is an adult mental health service, there will be times when SHSC staff come into contact with people who are under the age of 18. If a deprivation of liberty is identified which involves a person under the age of 18, legal advice should be taken.

From a legal point of view, Trust staff are considered to be 'agents of the state' and as such have a legal obligation to both promote and protect individuals' human rights. All staff, be they inpatient or community, need to be alert to the possibility that people they work with might be being deprived of their liberty without any lawful authority being in place to allow this.

If staff identify that a person is, or might be, being deprived of their liberty without lawful authority they have a duty to escalate this. Legal and/or safeguarding advice should be taken if guidance and support is needed.

3 Purpose

- 3.1 The aim of this policy is to provide Trust staff with guidance on how the Deprivation of Liberty Safeguards (DOLS) are managed and implemented within the Trust. It aims to ensure that staff are aware of their roles and responsibilities so that any deprivations of liberty are identified (regardless of working context) and legal processes are followed.
- 3.2 Following this policy should facilitate the Trust's compliance with legal requirements and should also ensure that service users' rights are being protected and promoted.

4 Definitions

The Deprivation of Liberty Safeguards (DOLS), along with the various legal frameworks which surround it, contains a wide range of terminology which – unless staff work frequently into DOLS processes – can be confusing.

An extensive list of definitions is therefore outlined below.

Acid test

The 'acid test' is an important set of criteria which helps to identify if a Deprivation of Liberty is taking place. The test arises from a landmark legal case, considered by the Supreme Court, known as 'Cheshire West' (*Cheshire West and Chester Council v P* [2014] UKSC 19). In Cheshire West, the Supreme Court ruled that a person is being Deprived of their Liberty if the following conditions are met:

- The person is subject to continuous supervision and control;
- The person is not free to leave; and
- The Deprivation of Liberty is attributed to the State

The Supreme Court also stated that objection by the person being deprived of their liberty is not a determining factor. What is relevant, however, is if steps would be taken to prevent the person from leaving should they try, or wish, to do so. If any such steps would be taken, then the person is not free to leave.

Age assessment

The Age Assessment, usually carried out by a Best Interests Assessor (BIA), establishes whether the person being deprived of their liberty is aged 18 or above.

Court of Protection

The Court of Protection is a court of law which was established by the Mental Capacity Act 2005. It has a wide-ranging jurisdiction in respect of decisions related to health, welfare, and the financial affairs of individuals who lack mental capacity. The Court is a superior court of record where its decisions can be published and established as legal precedent. The Court of Protection has the same powers held by the High Court in respect of witnesses, injunctions, contempt and enforcement.

Best interest assessment

A Best Interest Assessment, for the purpose of being one of the six statutory DOLS assessments, is conducted by a Best Interest Assessor (BIA). This assessment considers whether a deprivation of liberty is taking place (or will take place) and whether the care being provided under conditions of a deprivation of liberty is in the person's best interests.

Deprivation of Liberty

A Deprivation of Liberty exists when the 'acid test' is met.

DOL

See **Deprivation of Liberty**.

DOLS

See **Deprivation of Liberty Safeguards**

DOLS statutory assessments

In order for a Local Authority to determine if a person is being Deprived of their Liberty and that being deprived of their liberty is in that person's best interests, six statutory assessments must be completed. These assessments are:

- Age assessment
- No refusals assessment
- Mental capacity assessment
- Mental health assessment
- Eligibility assessment
- Best interest assessment

Eligibility assessment

An eligibility assessment is one of the six statutory DOLS assessments. The eligibility assessment determines whether the individual is legally eligible to be deprived of their liberty by means of the DOLS arrangements, or if the deprivation of liberty must be authorised by different legal means eg. detention under the Mental Health Act.

Independent Mental Capacity Advocate (IMCA)

Prior to granting a DOLS authorisation, family, friends, and carers should ordinarily be informed and consulted about the application (whether it be an urgent authorisation or standard authorisation). If there is no one, other than a worker in a professional role, who is involved with the person, the Managing Authority must inform the Supervisory Body of this. An Independent Mental Capacity Advocate (IMCA) must then be instructed by the Supervisory Body. An IMCA, in cases relating to DOLS, has a duty to support and represent the person, but also has a range of rights. This includes having the power to make an application to the Court of Protection for any differences of opinion to be considered, or to appeal any DOLS which may have been authorised.

Managing Authority

The Managing Authority is the organisation that has responsibility for depriving a person of their liberty under the Deprivation of Liberty Safeguards (DOLS). For individuals who are deprived of their liberty on SHSC premises, the Managing Authority will be Sheffield Health and Social Care NHS Foundation Trust.

Mental capacity assessment

The mental capacity assessment, for the purpose of being one of the six DOLS assessments, is carried out by a Best Interest Assessor (BIA). This mental capacity assessment determines whether the person being deprived of their liberty has, or lacks, mental capacity to consent to the care arrangements where they are deprived of their liberty.

Mental Health Act

See Mental Health Act 1983 (as amended)

Mental Health Act 1983 (as amended) (MHA)

The MHA contains a range of statutory powers in respect of individuals who are suffering from a disorder or disability of the mind. This includes a power to deprive a person of their liberty for the purposes of assessing and treating their mental disorder, regardless of the person's mental capacity to consent to this. The MHA also contains a wide range of rights for patients who are subject to such powers. Detention under the MHA is different and separate to the Deprivation of Liberty Safeguards.

Mental health assessment

The mental health assessment, for the purpose of being one of the six statutory DOLS assessments, is carried out by a doctor who is approved under section 12 Mental Health Act. The purpose of this mental health assessment is to determine whether the person being deprived of their liberty has a disorder or disability of the mind.

No refusals assessment

The 'no refusals' assessment determines whether there are any grounds which would prevent a DOLS authorisation from being given. Circumstances where such an authorisation could not be made would be if the person has a valid advance decision in relation to any, or all, of the proposed treatment, or if a deprivation of liberty for the purposes of care/treatment conflicts with the decision reached by a person holding a valid and relevant Power of Attorney, or Court Appointed Deputy.

RP

See Relevant Person

Relevant Person (RP)

The Relevant Person is the individual who has been deprived of their liberty by means of a Deprivation of Liberty Safeguards process.

Relevant Person's Representative (RPR)

The Relevant Person's Representative (RPR) is a person who is appointed by the Supervisory Body to support and represent a person who has been deprived of their liberty under the Deprivation of Liberty Safeguards arrangements. The RPR is someone who is independent from the care team/hospital/care team that works with the Relevant Person.

RPR

See Relevant Person's Representative.

Standard DOLS authorisation

A standard DOLS authorisation is an authorisation which has been granted by the Supervisory Body after completion of all of the DOLS statutory assessments. Such an authorisation allows for the Relevant Person to be deprived of their liberty in the location stated in the authorisation.

Supervisory Body

The Supervisory Body is the organisation that considers requests for DOLS authorisations, arranges DOLS assessments, and grants DOLS authorisation where deemed necessary, proportionate, and when the legal eligibility is met. In Sheffield, the Supervisory Body is Sheffield City Council.

The Trust

The Trust means Sheffield Health and Social Care NHS Foundation Trust.

Urgent DOLS authorisation

An urgent DOLS authorisation is where a Managing Authority completes both an urgent and standard DOLS application and submits it to the Supervisory Body. An urgent DOLS authorisation is, in essence, the Managing Authority authorising itself to immediately deprive a person of their liberty. An urgent DOLS authorisation would ordinarily be made when a care service/provider is having to deprive a person of their liberty but no authorisation is currently in place to authorise this. An urgent DOLS authorisation lasts for up to 7 days only and can only be renewed once. Whenever an Urgent DOLS authorisation is submitted, there must always be an application for a Standard Authorisation.

5 Detail of the policy

5.1 A key pre-requisite of ensuring DOLS processes are followed is that staff need to know what a DOL is. Without this understanding, there is a significant risk that staff will not identify when a person is being deprived of their liberty.

5.2 Defining a 'deprivation of liberty' and the 'acid test'

In 2014, a landmark legal case (*Cheshire West and Chester Council v P* [2014] UKSC 19) ruled that a person is being deprived of their liberty if they are:

- Under continuous supervision and control; and
- Not free to leave

This is known as the 'acid test'.

Whilst this ruling was welcomed by many, it subsequently generated multiple questions in respect of what 'continuous supervision' and 'control', as well as 'not free to leave' meant.

It is not possible for any definition to cover every scenario and so every case has to be considered in the round and on its own merits. Some general observations are, however, worth noting:

- Staff should take care to not, albeit unintentionally, 'play on words'. For example, seeking to call an intervention 'support' rather than 'control' is unlikely to withstand any legal challenge.
- Caution is urged when people who are deprived of their liberty are being 'allowed' to make multiple decisions for themselves. Arguments that a person is being, for example, 'allowed out' means they are not deprived of their liberty are similarly unlikely to withstand challenge. The mere fact that a person is 'being allowed' to do something strongly suggests that a person could be 'stopped' from doing something if the health/care professional deemed it to be necessary.
- An intervention which results in a person being deprived of their liberty which is well intentioned can still constitute being supervision and control.
- The term 'continuous' should not be interpreted too literally and it does not mean that a person requires 1:1 for 24 hours a day. Some suggest 'continuous' should be considered as being more 'complete', meaning that interventions would have the opportunity and power to intervene even if this is not being exercised all of the time.
- The term 'not free to leave' should similarly not be interpreted too literally. Legal judgments have been made which show that a person does not need to be 'behind a locked door' to be deemed as not free to leave. For example, in the case of *Stanev v Bulgaria*, a service user was deemed to be being deprived of their liberty even though they were able, on their own, to leave the institution where they were staying in order to go to a place of employment. Key deciding factors in this case were that the manager of the institution allowed the resident to do this and that certain actions would be taken if the service user deviated and did not come back. 'Not free to leave' should therefore be considered from a perspective of the person not being free to leave permanently to choose where they live and with who.

5.3 What is irrelevant

The Supreme Court, within the *Cheshire West* case, stated that the following factors are not relevant when determining if a DOL arises:

That depriving a person of their liberty is justified

Regardless of whether the deprivation was justified, if the acid test is met then a deprivation of liberty is occurring and there needs to be legal authority in place to allow this.

That the placement/care is expected for a person of particular needs

It is irrelevant if it is usual for a person with their level of needs and support to be deprived of their liberty. The Supreme Court was clear that these individuals needed to have their right to liberty to be safeguarded just as any other person.

Whether a person is trying to leave/objecting

All because a person might not be trying to leave or objecting to their care this does not mean they are not deprived of their liberty. The key question to ask is if the person wanted to leave, tried to leave, or if a relative/friend tried to move the person to live elsewhere, would health/care staff allow this or would they stop the person from leaving?

5.4 Deprivation of Liberty Safeguards versus detention under the Mental Health Act

The interplay between the Mental Health Act, Mental Capacity Act and Deprivation of Liberty Safeguards can become quite complex and difficult to navigate. Indeed, occasions have arisen when Judges have struggled to navigate this interface.

Given this complexity, practitioners run the risk of opting for either the MHA or DOLS for reasons which may not be legally based. For example, professionals may find themselves applying either the DOLS arrangements or MHA process solely because the professional considers one process to be less restrictive than the other.

Similarly, professionals should not opt to use one process over another based on their personal preference or familiarity.

The process set out in Figure 5 shows the decision making process which practitioners should adopt when there is a query about whether a person should be made subject to a DOLS or detained under the MHA.

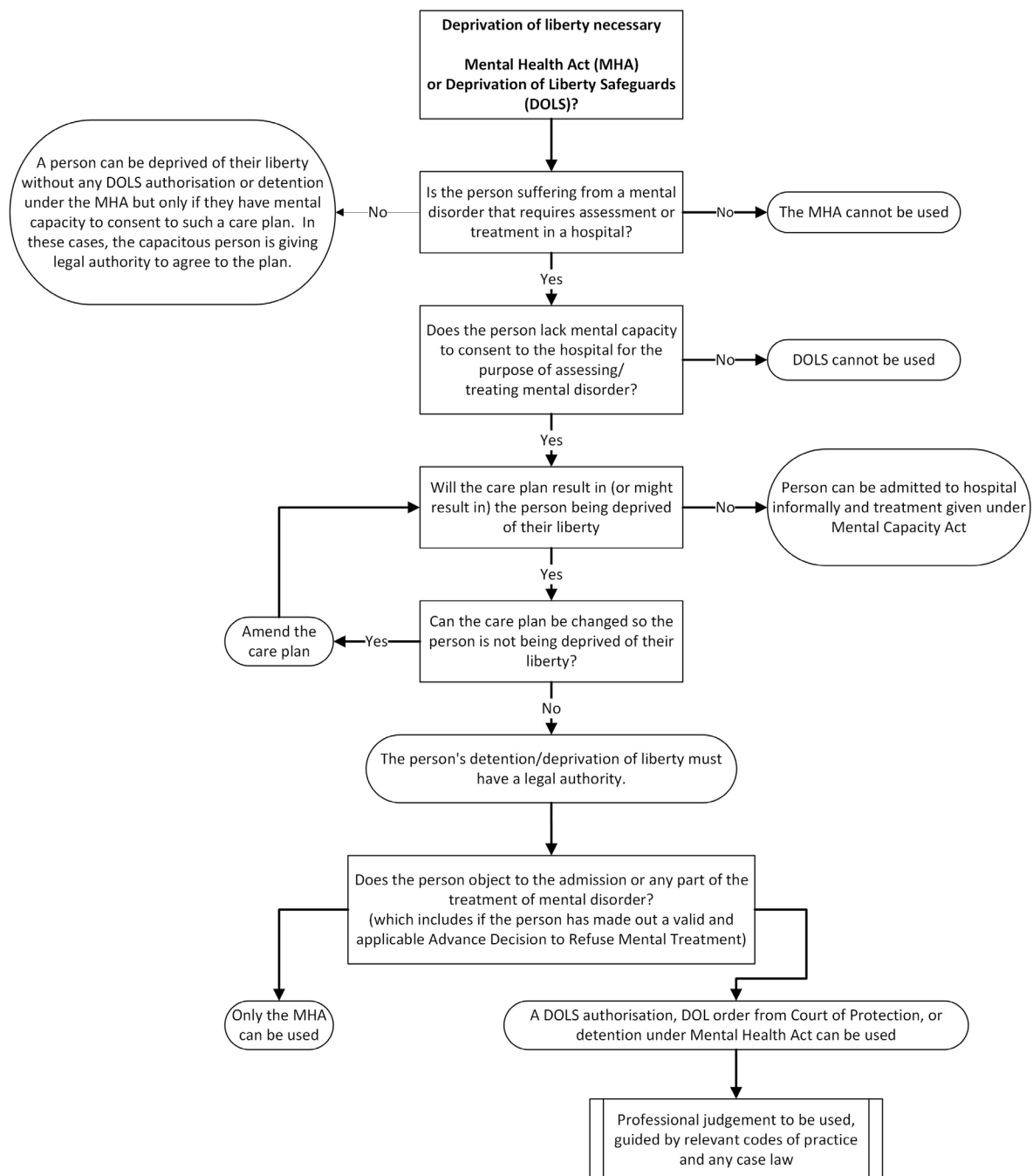


Figure 5: Decision making tree – Use Mental Health Act or Deprivation of Liberty Safeguards?

Figure 5 shows that if an individual:

- Is suffering from a mental disorder, as defined by the MHA;
- needs to be admitted to hospital for assessment/treatment of the mental disorder (or manifestations arising from it) and that the MHA detention criteria are met;
- if, when admitted to hospital, has a care plan which amounts to the individual being deprived of their liberty;
- lacks mental capacity to consent to the admission and treatment;
- *does not object* to being admitted in this context or to receive treatment for their mental disorder

then, in theory, the individual could potentially be admitted to hospital and deprived of their liberty by either the DOLS arrangements or by detention under the MHA. In these cases, treatment – even though for mental disorder – would be decided upon using the Mental Capacity Act (ie. best interest decisions).

In cases such as these, the individual's care team must ensure that these circumstances do not change. If they do change, it might not be possible to provide ongoing care/treatment using DOLS and the Mental Capacity Act. For example, if an individual is admitted under the above circumstances and they object to some (or any) of their care/treatment for their mental disorder, the person would not be eligible for the DOLS framework and assessment under the Mental Health Act should be conducted immediately.

5.5 DOLS or detention under the MHA – which is least restrictive?

It is a well-established principle in mental health care that any care or treatment which is provided to a person should be the least restrictive in nature.

It is not uncommon for some health and social care professionals to assume that a person being deprived of their liberty by means of DOLS is less restrictive than being detained under the MHA.

A key point to highlight is that because both the DOLS arrangements and MHA detention interferes with people's rights significantly, and both remove liberty, it cannot be said that one regime is less restrictive than the other.

The Court of Protection, in the case of *Manchester University Hospitals NHS Foundation Trust v JS & Anor* [2023] EWCOP 12, has reinforced this important stance by pointing out that any restrictions or deprivations of liberty which arise do so because of the care plan which has been written for a particular individual. The legal 'label' which authorises these is therefore "immaterial to its restrictive nature, whether that be the MHA, [Mental Capacity Act], [or] 'common law'" (para 94)

5.6 Differences of opinion regarding detention under the Mental Health Act or Mental Capacity Act

Separate guidance regarding whether the Mental Health Act or Deprivation of Liberty Safeguards may be more appropriate exists on SHSC intranet (Document title: Guidance on When to Consider Detention under the Mental Health Act or Deprivation of Liberty under a DoLS authorisation?).

If both legal regimes apply to an individual, the professionals involved need to review the individual's circumstances together and collectively consider the views of others regarding which regime is most appropriate. At this point, least restrictiveness should be considered (note: this is not the same as deciding at the start of a decision making process which process, DOLS or MHA, is least restrictive).

The purpose of the professional discussion is to reflect upon each other's opinion and determine if these dialogues become persuasive to deciding. If not already done, assessors should consider accessing support from managers and case specific supervision. Advice from legal advisors, at an early stage, is recommended where there are disagreements.

The overarching principle is that individuals whose liberty is being deprived with no authorisation being in place should not be caught up in the middle of disputes. If the respective Mental Health Act and DOLS assessors cannot reach agreement, then the matter may need to be referred to the Court of Protection. Early legal advice and support in these events is again strongly encouraged.

5.7 Provision of medical treatment when subject to a Deprivation of Liberty authorisation/order

Unlike the Mental Health Act, a DOLS authorisation/order does not give a legal power to give treatment to the person who is subject to a DOL. Any DOLS authorisation/order only authorises a deprivation of liberty.

Under no circumstances should statements be made in care plans which says, or suggests, that treatment is being provided “under DOLS”. Statements such as these are legally incorrect and risk treatments being given to a person unlawfully, potentially constituting assault.

Should a person who is subject to a DOLS require particular care or treatments, and the person lacks mental capacity to consent to them, the Mental Capacity Act should be followed. In other words, mental capacity assessments in respect of proposed treatment would need to be conducted and if the person lacked capacity, best interest decisions would need to be made.

6 Duties

The Trust Board has ultimate responsibility and ‘ownership’ for the quality of care, support and treatment provided by the Trust. This includes the implementation of the Policy throughout the Trust and ensuring practice is in accordance with legal requirements.

On a day-to-day basis, the Board’s responsibilities in respect of DOLS are discharged by:

6.1 Chief Executive

- Demonstrating strong and active leadership from the top; ensuring there is visible, active commitment from the Board and appropriate board-level review of good practice with regard to the Mental Capacity Act Deprivation of Liberty Safeguards;
- Ensuring there is a nominated Executive Director leading on the Board’s responsibilities with regard to the Mental Capacity Act Deprivation of Liberty Safeguards;
- Ensuring there are effective ‘downward’ and ‘upward’ communication channels embedded within the management structures to ensure the communication of the need for all staff to understand and appropriately use the Mental Capacity Act Deprivation of Liberty Safeguards;
- Ensuring finances, personnel, training, care records and other resources are made available so that the requirements of this policy can be fulfilled;
- Expecting all health and social care staff to play a part in the responsibility for meeting the requirements of this Policy;
- Maintaining on-going accountability for good practice around the Mental Capacity Act Deprivation of Liberty Safeguards through management roles and responsibilities.

6.2 Service/directorate Leadership Teams

Senior Managers have responsibility for developing, implementing and improving the Trust's policies and procedures as an integral part of day-to-day operations. They have a duty to take all practicable measures to ensure that their staff are suitably trained and competent with Deprivation of Liberty Safeguards and to ensure that all staff understand and comply with the policy and procedure.

6.3 Team, Ward and Unit Managers

The Appropriate Manager is responsible for:

- Ensuring their staff are informed of the Deprivation of Liberty Safeguards and receive sufficient training and support to undertake their role.
- Ensuring that when a service user is identified as being deprived of their liberty the appropriate documentation is completed and an application is submitted to the Supervisory Body.
- Ensuring that individuals who are being deprived of their liberty based on the DOLS arrangements are entered onto the Trust's DOLS register
- Taking all reasonable steps to inform the individual and their relatives/carers that a DOLS application is to be made and the reasons why. The outcome of the application should be communicated by the appropriate manager where practicable to the service user, their carer/relatives
- Ensuring that a nominated deputy undertakes all duties with regard to making DoLS applications, recording onto the register and adhering to, or appealing against, conditions as necessary.

The appropriate manager must also undertake to, or ensure that a nominated deputy undertakes to:

- Take all steps to minimise the restrictions imposed on a person.
- Ensure that an application for the authorisation of a deprivation of liberty for any person who may come within the scope of the Deprivation of Liberty Safeguards and comes under their area of responsibility is made.
- Ensure that an urgent authorisation is put in place where a deprivation of liberty is already apparent.
- Ensure the deprivation of liberty authorisation is reviewed, remains current and is ended when appropriate.
- Take all practical and possible steps to ensure the service user understands the effects of the authorisation and their rights around it.
- Ensure that conditions associated with a Deprivation of Liberty Authorisation are adhered to (or appealed against if this is felt necessary):
 - In cases where the Appropriate Manager feels that there is an issue with a condition made on an authorisation and wishes to appeal that condition, it is the responsibility of the Appropriate Manager (Ward Manager or Registered Manager) to submit a written appeal which will be considered by the Supervisory Body.
 - If there has been a change to the relevant person's care, as a result of which it would be appropriate to vary the conditions to which the standard authorisation is subject, (whether by amending or omitting an existing condition, or by adding a new condition), the Appropriate

Manager (Ward Manager or Registered Manager) must bring this to the attention of the Supervisory Body using Form 9.

- Ensure appropriate advocacy and representation is involved and referred to wherever necessary.

6.4 **Individual Employees**

All staff within the scope of the policy are responsible for its implementation within their area of accountability. It is each individual's responsibility to ensure they make themselves aware of this guidance and receive sufficient training and information about the DoLS to undertake their role. Staff must keep all service users in their care under review for potential deprivation of liberty situations. If a deprivation of liberty is identified and does not appear to have been lawfully authorised, this must be escalated immediately to an appropriate manager.

6.5 **Managing Authority – SHSC to:**

- Ensure the DoLS are implemented effectively within the Trust by providing systems which support the safeguards and monitor compliance;
- Ensure authorisations for deprivation of liberty are sought from the Supervisory Body in all instances where a person is considered to be deprived of their liberty;
- Ensure appropriate records are kept;
- Inform all relevant parties, including the service user, regarding the application details and outcome of the DoLS process.

7 **Procedure**

The question as to whether a person is being deprived of their liberty is ultimately a legal one, where the Courts are the final arbiters of whether a deprivation of liberty exists or otherwise. That said, however, it is not possible (and nor would it be appropriate) for all cases to be referred to the Court of Protection for such determinations to be made.

It is therefore necessary for professionals to consider each case on its merits, taking into account the acid test, the person's mental capacity, and nature of the environment in which a person is receiving care/support.

In cases of doubt as to whether a person is deprived of their liberty, or otherwise, legal advice should be sought.

7.1 Deprivations of liberty within domestic settings

Situations may arise when a person is receiving care and support within their own property and the care arrangements are such that the individual is being deprived of their liberty. As is the case with any deprivation of liberty, there must always be an appropriate and valid legal authority in place for such deprivations to be lawful.

Wherever a person is deprived of their liberty within their personal domestic settings, eg. their home and supported accommodation, Supervisory Bodies do not have the legal authority to authorise these types of deprivation. In situations such as these, an application to the Court of Protection for a Deprivation of Liberty order would be required (but not necessarily by SHSC).

In the event that a SHSC staff member is working with an adult who is (or potentially is/will) being deprived of their liberty in their home, the staff member must seek legal advice. Seeking such advice will allow for a discussion of the individual context and determine whether a legal application needs to be made to the Court of Protection (and by who).

7.2 Deprivations of liberty within supported living

As is the case with deprivations of liberty in personal domestic settings, if a person is being deprived of their liberty in supported living arrangements, a Deprivation of Liberty Safeguards authorisation issued by the Local Authority is not available. An application to the Court of Protection will be needed in these circumstances.

In the event that a SHSC staff member is working with an adult who is (or potentially is) being deprived of their liberty within a supported living arrangement, the staff member must take legal advice. Seeking such advice will allow for a discussion of the individual context and determine whether a legal application needs to be made to the Court of Protection (and by who).

7.3 Deprivations of liberty on SHSC in-patient wards

It should be remembered that this policy is in respect of patients who are (or who might be) being deprived of their liberty by means of the Deprivation of Liberty Safeguards. This policy is not in relation to patients who are detained under the Mental Health Act.

The starting point whenever a person is being, or will be, deprived of their liberty by means of a DOLS authorisation is to review whether the care is being provided in the least restrictive manner. The team should therefore consider whether the objectives of the care/treatment can be provided under conditions which do not deprive a person of their liberty.

If the care plan, or proposed care plan, cannot be amended to avoid a deprivation of liberty, and if the person lacks mental capacity to consent to the care arrangements, a Deprivation of Liberty Safeguards authorisation must be sought.

There are two 'types' of DOLS authorisation: 1) urgent authorisations, and 2) standard authorisations. The type of authorisation which is needed will depend upon each individual case.

7.4 Urgent DOLS authorisations on SHSC wards

The Deprivation of Liberty Safeguards Code of Practice states that ideally applications to deprive a person of their liberty should be made before the deprivation commences.

If, however, a person is already being deprived of their liberty, a legal authority to approve this must be put in place immediately. This would be by means of submitting a request to the Local Authority for a Standard Authorisation **and the granting of an Urgent DOLS Authorisation.**

Note that when making an urgent DOLS authorisation, a standard DOLS authorisation must be applied for at the same time.

Both of these are carried out by completing the 'DOLS request for a standard and urgent authorisation' form ('DOLS Form 1') which can be obtained from Sheffield City Council's DOLS internet page.

At the time of writing, the link to Sheffield City Council's DOLS website is:
<https://www.sheffield.gov.uk/social-care/adults/deprivation-liberty-safeguards>

Should the link not work, Sheffield City Council's DOLS team can be contacted by 0114 205 7183 for a form to be requested. The Sheffield City Council DOLS team can also be emailed at: mca@sheffield.gov.uk

Depriving a person of their liberty is always a serious matter, even more so when an urgent DOLS authorisation is granted because it is, in effect, the Managing Authority (ie. the Trust) authorising itself to deprive the person of their liberty without the full safeguards which are come into play as part of a standard DOLS assessment process.

In light of this, the Deprivation of Liberty Safeguards Code of Practice states decision makers in respect of urgent DOLS authorisations should be taken at a senior level within the Managing Authority.

When making an application to the Local Authority for a DOLS authorisation, the Managing Authority (ie. the Trust) must consult with the person, their family or friends and any Independent Mental Capacity Advocate (IMCA) already involved, unless it is impractical or impossible to do so, or undesirable in terms of the interests of the relevant person's health or safety.

If the Managing Authority (ie. the Trust) considers that any of the following apply to a person who has been referred for a DOLS authorisation (or who is subject to a DOLS authorisation), they should also discuss this with the Supervisory Body:

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

7.5 Actions to take upon making an urgent DOLS authorisation

Once the Trust has made out an urgent DOLS authorisation, a copy of the authorisation must:

- be given the Relevant Person;
- be given to their Independent Mental Capacity Advocate (IMCA) if they have one;
- be uploaded to the Relevant Person's Electronic Person Record (EPR).

A written reason(s) setting out why an urgent DOLS authorisation was necessary must also be made in the EPR.

The Trust, as Managing Authority, should take reasonable steps to inform the Relevant Person's family, friends and carers that an urgent DOLS authorisation is in place and the effect of this.

The Managing Authority is required to take all reasonable steps to help the Relevant Person understand that an urgent DOLS authorisation is in place and what the effect of this is.

The Managing Authority must similarly seek to help the Relevant Person understand their right of appeal against the DOLS authorisation. Information given to the Relevant Person about the effect of the urgent DOLS authorisation and how it can be appealed must be provided in writing and verbally.

7.6 Requesting an extension of an urgent authorisation

In exceptional circumstances where the assessments have not been completed within the seven day period, the urgent authorisation can be extended by the Supervisory Body for a further seven days.

Where it has not been possible for the assessors to complete the assessments within the seven day period then the DoLS team will contact the managing authority to advise them to make an application for an extension to the urgent authorisation.

An extension to an urgent DOLS can only happen once.

7.7 Planned deprivations of liberty on SHSC wards

The Deprivation of Liberty Safeguards Code of Practice states that ideally applications to deprive a person of their liberty should be made before the deprivation commences.

If a person is not yet deprived of their liberty, but a deprivation of liberty is anticipated within the subsequent 28 days, an application for a standard DOLS authorisation can and should be made.

Both of these are carried out by completing the 'DOLS request for a standard and urgent authorisation' form ('DOLS Form 1') which can be obtained from Sheffield City Council's DOLS internet page.

At the time of writing, the link to Sheffield City Council's DOLS website is:

<https://www.sheffield.gov.uk/social-care/adults/deprivation-liberty-safeguards>

Should the link not work, Sheffield City Council's DOLS team can be contacted by 0114 205 7183 for a form to be requested. The Sheffield City Council DOLS team can also be emailed at: mca@sheffield.gov.uk

Given that depriving a person of their liberty is a serious and infringement upon a person's right to liberty, applications for a DOLS authorisation should be carried out by a manager of the service eg. ward manager, registered manager.

When making an application to the Local Authority for a DOLS authorisation, the Managing Authority (ie. the Trust) must consult with the person, their family or friends and any Independent Mental Capacity Advocate (IMCA) already involved, unless it is impractical or impossible to do so, or undesirable in terms of the interests of the relevant person's health or safety.

If the Managing Authority (ie. the Trust) considers that any of the following apply to a person who has been referred for a DOLS authorisation (or who is subject to a DOLS authorisation), they should also discuss this with the Supervisory Body:

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

7.8 Urgent DOLS authorisation in SHSC residential units

The Deprivation of Liberty Safeguards Code of Practice states that ideally applications to deprive a person of their liberty should be made before the deprivation commences.

If, however, a person is already in the unit and is being deprived of their liberty, a legal authority to approve this must be put in place immediately. This would be by means of submitting a request to the Local Authority for a Standard Authorisation **and** the granting of an Urgent DOLS Authorisation.

Note that when making an urgent DOLS authorisation, a standard DOLS authorisation must be applied for at the same time.

Both of these are carried out by completing the 'DOLS request for a standard and urgent authorisation' form ('DOLS Form 1') which can be obtained from Sheffield City Council's DOLS internet page.

At the time of writing, the link to Sheffield City Council's DOLS website is:
<https://www.sheffield.gov.uk/social-care/adults/deprivation-liberty-safeguards>

Should the link not work, Sheffield City Council's DOLS team can be contacted by 0114 205 7183 for a form to be requested. The Sheffield City Council DOLS team can also be emailed at: mca@sheffield.gov.uk

Depriving a person of their liberty is always a serious matter, even more so when an urgent DOLS authorisation is granted because it is, in effect, the Managing Authority (ie. the Trust) authorising itself to deprive the person of their liberty without the full safeguards which are come into play as part of a standard DOLS assessment process.

In light of this, the Deprivation of Liberty Safeguards Code of Practice states decision makers in respect of urgent DOLS authorisations should be taken at a senior level within the unit.

When making an application to the Local Authority for a DOLS authorisation, the Managing Authority (ie. the Trust) must consult with the person, their family or friends and any Independent Mental Capacity Advocate (IMCA) already involved, unless it is impractical or impossible to do so, or undesirable in terms of the interests of the relevant person's health or safety.

If the Managing Authority (ie. the Trust) considers that any of the following apply to a person who has been referred for a DOLS authorisation (or who is subject to a DOLS authorisation), they should also discuss this with the Supervisory Body:

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

7.9 Actions to take upon making an urgent DOLS authorisation

Once the Trust has made out an **urgent DOLS authorisation**, a copy of the authorisation must:

be given the **Relevant Person**;

be given to their **Independent Mental Capacity Advocate** (IMCA) if they have one;

be uploaded to the **Relevant Person's Electronic Person Record (EPR)**.

A written reason(s) setting out why an **urgent DOLS authorisation** was necessary must also be made in the **EPR**.

The Trust, as Managing Authority, should take reasonable steps to inform the Relevant Person's family, friends and carers that an urgent DOLS authorisation is in place and the effect of this.

The Managing Authority is required to take all reasonable steps to help the Relevant Person understand that an urgent DOLS authorisation is in place and what the effect of this is.

The Managing Authority must similarly seek to help the Relevant Person understand their right of appeal against the DOLS authorisation. Information given to the Relevant Person about the effect of the urgent DOLS authorisation and how it can be appealed must be provided in writing and verbally.

7.10 Requesting an extension of an urgent authorisation

In exceptional circumstances where the assessments have not been completed within the seven day period, the urgent authorisation can be extended by the Supervisory Body for a further seven days.

Where it has not been possible for the assessors to complete the assessments within the seven day period then the DoLS team will contact the managing authority to advise them to make an application for an extension to the urgent authorisation.

An extension to an urgent DOLS can only happen once.

7.11 Planned DOLS in an SHSC residential unit

The Deprivation of Liberty Safeguards Code of Practice states that ideally applications to deprive a person of their liberty should be made before the deprivation commences.

If a person is not yet deprived of their liberty, but a deprivation of liberty is anticipated within the subsequent 28 days, an application for a standard DOLS authorisation can and should be made.

Both of these are carried out by completing the 'DOLS request for a standard and urgent authorisation' form ('DOLS Form 1') which can be obtained from Sheffield City Council's DOLS internet page.

At the time of writing, the link to Sheffield City Council's DOLS website is:

<https://www.sheffield.gov.uk/social-care/adults/deprivation-liberty-safeguards>

Should the link not work, Sheffield City Council's DOLS team can be contacted by 0114 205 7183 for a form to be requested. The Sheffield City Council DOLS team can also be emailed at: mca@sheffield.gov.uk

NPCS003 Mental Capacity Act 2005 Deprivation of Liberty Safeguards Policy

Version 9 – January 2025

Page 25 of 37

Given that depriving a person of their liberty is a serious and infringement upon a person's right to liberty, applications for a DOLS authorisation should be carried out by a manager of the service.

When making an application to the Local Authority for a DOLS authorisation, the Managing Authority (ie. the Trust) must consult with the person, their family or friends and any Independent Mental Capacity Advocate (IMCA) already involved, unless it is impractical or impossible to do so, or undesirable in terms of the interests of the relevant person's health or safety.

If the Managing Authority (ie. the Trust) considers that any of the following apply to a person who has been referred for a DOLS authorisation (or who is subject to a DOLS authorisation), they should also discuss this with the Supervisory Body:

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

7.12 The Deprivation of Liberty Safeguards (DoLS) Assessment

Once the standard authorisation application has been submitted to the Local Authority DoLS team they will arrange for the service user to be assessed by a Mental Health Assessor and a Best Interest Assessor.

These individuals will determine whether the service user meets the requirement of the DoLS. During the assessment the assessors may ask to examine and take copies of:

- Any health or social care records which relate to the person, and
- The person's Care Plan

The assessor/s will also need to consult with a senior member of staff and other staff on duty who know the service user.

They will also consult with the service users family/ significant others. Therefore, it is important that where an application under the DoLS is submitted, that the appropriate manager ensures that the service user and their family/ significant others are fully aware that the standard authorisation application has been submitted.

7.13 Assessment Outcome

Where all the requirements are met the Supervisory Body will grant a DOLS authorisation. This Authorisation will give details of the purpose and duration and any conditions which may relate to it.

Conditions: where there are conditions attached to the authorisation, it is the Appropriate Manager's responsibility to ensure that they are met and that the Supervisory Body is kept informed on progress.

Where an Authorisation is refused by the Supervisory Body the service user's care plan will need to be reviewed **immediately in order to ensure that the trust is supporting the service user in a way that is legally appropriate and defensible**. If appropriate a request for an assessment under the Mental Health Act should be made. Legal advice should be sought where necessary.

It is the responsibility of the Appropriate Manager (Ward manager or Registered Manager) to inform CQC about Deprivation of Liberty Authorisations. The Trust requires that they do this once the outcome of the application has been agreed. They should do this using the following web link:

<https://www.cqc.org.uk/guidance-regulation/providers/notifications/application-deprive-person-their-liberty-dols-notification-form>

Staff should always use this web link to access forms, rather than relying on locally saved copies (in case changes are made to the templates).

It is the responsibility of the Appropriate Manager (Ward manager or Registered Manager) to ensure that the date of which the notification is made to CQC is entered onto the trust DoLS Register.

It is the responsibility of the Trust as the Managing Authority to ensure that all practicable steps are taken to ensure that the service user and their representative understand the effects of the Authorisation and their rights. Appropriate information must be given to the person both orally and in writing. Written information must also be given to the Relevant Person's Representative.

7.14 Ending an Authorisation

When a service user who is subject to an Authorisation under the DoLS either:

- no longer meets any of the requirements; or
- is due to be discharged from the care of the Trust,

then the relevant manager (Ward Manager or Registered Manager) **must** ensure that any restrictions on the service user are ceased and complete a Form 9 and send this to the Supervisory Body who will arrange for the authorisation to be reviewed and ended.

The form can be downloaded from:

If the service user is moving on to the care of another service in which they will be deprived of their liberty, it is the responsibility of the receiving service to apply for an authorisation for the new setting. An authorisation is specific to the setting in which it is made and cannot be moved between settings.

7.15 Continuation of Deprivation of Liberty Safeguards

Where it is expected that the service user will remain under the care of the Trust when the Standard Authorisation is due to expire, it is the responsibility of the Trust (Appropriate Manager) to ensure that a new Form 4 is submitted to the Supervisory Body 28 days before the current authorisation expires.

8. Unauthorised DOLS

Due to the high volume of DOLS applications being made nationally, it is possible that applications for DOLS will go for potential significant periods of time before the person is assessed by the Local Authority. This may mean that a person is being deprived of their liberty with no legal authority.

In this circumstance, the Sheffield Supervisory Body advises that the Managing Authority should continue to act in the person's best interests and keep the care plan under review to ensure any care or treatment is provided in the least restrictive way. The Managing Authority must contact the Supervisory Body if the person's situation changes significantly.

Where a person is being deprived of their liberty but no authorisation is in place from the DOLS arrangements, an incident report should be submitted. The incident category to be used is:

Incident type:	Mental health legislation
Cause group:	DOLS
Cause 1:	DoL occurring – No DOLS in place

9. Transferability of DOLS

DOLS authorisations are location specific and are not transferable between locations.

If a person moves to a different hospital or care home, the Managing Authority (ie. the Trust) of the new hospital or care home must request a new standard authorisation. This application should be made before the move takes place.

If a move has to take place so urgently that making a standard authorisation referral prior to transfer is not possible, the Managing Authority of the new hospital or care will need to grant an urgent authorisation.

10. Leave arrangements

Unlike the Mental Health Act which allows for detained patients to be given leave by their Responsible Clinician under s17 MHA, there is no similar leave provision under the Deprivation of Liberty Safeguards.

This does not mean, however, that a person is not allowed to leave the place where they are being cared for/living.

For individuals who are deprived of their liberty by virtue of the DoLS arrangements, leave from the place they are being cared for/living will be managed by care planning and care plans.

11 Notification of the Death of a Service User subject to DoLS

Care Quality Commission

The death of any service user who is subject to DoLS, is reportable to the Care Quality Commission (CQC), as set out in the registration requirements arising from the Health and Social Care Act 2008 (and defined in the CQC's Fundamental Standards Legislation (November 2014)).

Coroners

Section 178 of the Policing and Crime Act 2017 gives effect to the recommendation in the report of the Chief Coroner that cases involving the death of a person subject to DoLS be removed from the category of "in state detention".

With a death occurring on or after 3rd April 2017 any person subject to a DoLS is no longer 'in state detention' for the purposes of the Coroners and Justice Act 2009, however if the DoLS has not been formally authorised, the person may still be deemed to be in state detention.

Staff are advised to refer to current published guidance at the time of a person's death if they were subject to DoLS or an application had been made and not yet granted.

Appropriate Manager Responsible

In the event of a service user's death, the Appropriate Manager (Ward manager or Registered Manager) must:

- Complete an incident form clearly indicating if the service user has a DoLS authorisation in situ;
- Update the trust DoLS Register with date of death;
- Notify the Supervisory Body DoLS Team of the death
- Complete any necessary notification forms sent to them from the Clinical Governance Team.

Upon receipt of the incident form, the Clinical Governance Team will:

- Send the appropriate CQC notification forms to the appropriate manager for completion;
- Send the completed notification forms to the CQC;
- Notify HM Coroner of SHSC's interest in the service user and of the DoLS authorisation.

12. The Relevant Person's Representative

When a standard DOLS authorisation is granted, the Local Authority must appoint a Relevant Person's Representative (RPR). The Trust should be routinely notified of who has been appointed as the RPR.

There are two primary functions of the RPR:

- i) To maintain contact with the person who has been deprived of their liberty; and
- ii) To represent and support the person who has been deprived of their liberty in matters related to the Deprivation of Liberty Safeguards.

Supporting the person who has been deprived of their liberty by the RPR can be done in a number of ways. For instance, the RPR could raise a complaint, make an application to the Court of Protection to challenge the deprivation of liberty, and they could ask the Supervisory Body to conduct a review of the person's case.

The RPR acts as an important, independent safeguard for those who are being deprived of their liberty.

The Mental Capacity Act Deprivation of Liberty Safeguards Code of Practice requires Managing Authorities to work closely with the RPR. For individuals who are deprived of their liberty on an SHSC inpatient ward, in Birch Avenue, Woodland View, or Beech, the Managing Authority is SHSC.

The Trust, as soon as is possible and practicable, must try and ensure that the Relevant Person, and their RPR, understands:

- The effect of the DOLS authorisation ie. what it means and how it will affect the Relevant Person.
- Their right to request a review
- Both the informal and formal complaints processes
- Their right to make an application to the Court of Protection to vary, or terminate, the Deprivation of Liberty Safeguarding authorisation

Providing this information is an ongoing process and should not be seen as a one-off, isolated task.

In light of the important role and remit that the RPR has, it is essential that the managers of the service where the RP is being deprived of their liberty know who the RPR is and this person is clearly recorded on the person's care record.

Given that one of the important requirements of the RPR is to have sufficient contact with the RP, there is an expectation that the unit where the RP is deprived of their liberty should accommodate visits between them at reasonable times.

The unit where the RP is being deprived of their liberty must always document when the RPR has had contact with the RP. When care staff are reviewing the Relevant Person's care plans, they should also review the contact which has taken place between the RPR and RP. If there is a concern that the RPR has not been having frequent contact with the RP, the relevant manager should seek to discuss this with the RPR and identify any particular difficulties or barriers to having frequent contact.

If an informal discussion of this nature does not result in an improvement in the frequency of contact, the relevant manager should notify the Supervisory Body of their concerns. Unless there are safety risks to indicate otherwise, the relevant should make the RPR aware that

they will need to speak with the Supervisory Body about the concerns they have regarding level of contact.

If the Supervisory Body has a similar concern regarding the level of contact between the RPR and RP, the RPR may need to be replaced.

If, for whatever reason, the staff on the unit where the RP is being deprived of their liberty become aware that the RPR is no longer able to undertake the role, the Supervisory Body must be informed. If there is no one to act as RPR, the Local Authority will need to consider instructing an Independent Mental Capacity Advocate (IMCA) to support and represent the RP.

13. Development, Consultation and Approval

- *Policy Author*
 - Jamie Middleton, Head of Mental Health Legislation
- *Guidance followed*
 - Mental Health Act Code of Practice 2015
 - Mental Capacity Act 2005
 - Deprivation of Liberty Safeguards Code of Practice
- *Groups and individuals consulted:*
 - Members of Mental Health Legislation Operational Group
- *Any changes made as a result of the consultation process:*
 - Significant changes made – see amendment log
- *Which governance group verified the document?*
 - Mental Health Legislation Operational Group

14 Audit, Monitoring and Review

Monitoring Compliance Template						
Minimum Requirement	Process for Monitoring	Responsible Individual/group/committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group/committee for action plan development	Responsible Individual/group/committee for action plan monitoring and implementation
Ongoing review of incident reports in respect of non compliance	Reporting to Mental Health Legislation Operational Group	Head of Mental Health Legislation/Mental Health Operational Group	Ongoing	Mental Health Legislation Operational Group	Mental Health Legislation Operational Group	Mental Health Legislation Operational Group

15 Implementation Plan

Action / Task	Responsible Person	Deadline	Progress update
Upload new policy onto intranet and remove old version		Within 1 week of ratification	
Make Mental Health Legislation Operational Group aware of new policy	Head of Mental Health Legislation	Within 1 week of approval by policy governance group	

16 Dissemination, Storage and Archiving (Control)

- The Trust will ensure that the policy is circulated to SHSC staff using the Trust's intranet site (Jarvis)
- Training delivered to staff in respect of Deprivation of Liberty Safeguards will make reference, and signpost, staff to this policy
- Previous versions of this policy are to be considered as being superseded and replaced by this version.

17 Training and Other Resource Implications

Training in relation to the Mental Capacity Act and Deprivation of Liberty Safeguards is already provided to SHSC staff.

18 Links to Other Policies, Standards (Associated Documents)

- Mental Capacity Act 2005 Code of Practice
- Advance Decisions to Refuse Treatment/Advance Statements
- Aggression and Violence: Respectful Response and Reduction
- Consent to Care and Treatment Policy
- Mental Health Act 1983 Code of Practice (2015).
- Safeguarding Adults Policy

19 Contact Details

<i>Title</i>	<i>Name</i>	<i>Phone</i>	<i>Email</i>
Head of Mental Health Legislation	Jamie Middleton	271 8110	jamie.middleton@shsc.nhs.uk

Appendix 1

Equality Impact Assessment Process and Record for Written Policies

Stage 1 – Relevance - Is the policy potentially relevant to equality i.e. will this policy potentially impact on staff, patients or the public? This should be considered as part of the Case of Need for new policies.

NO – No further action is required – please sign and date the following statement.
I confirm that this policy does not impact on staff, patients or the public.

Yes, this policy has an impact on staff, patients or the public.

Name/Date: Jamie S Middleton, 17.1.25

YES, Go to Stage 2

Stage 2 Policy Screening and Drafting Policy - Public authorities are legally required to have 'due regard' to eliminating discrimination, advancing equal opportunity and fostering good relations in relation to people who share certain 'protected characteristics' and those that do not. The following table should be used to consider this and inform changes to the policy (indicate yes/no/ don't know and note reasons). Please see the SHSC Guidance and Flow Chart.

Stage 3 – Policy Revision - Make amendments to the policy or identify any remedial action required and record any action planned in the policy implementation plan section

SCREENING RECORD	Does any aspect of this policy or potentially discriminate against this group?	Can equality of opportunity for this group be improved through this policy or changes to this policy?	Can this policy be amended so that it works to enhance relations between people in this group and people not in this group?
Age	No	No further action identified.	None needed
Disability	No	No further action identified.	None needed
Gender Reassignment	No	No further action identified.	None needed
Pregnancy and Maternity	No	No further action identified.	None needed

Race	No	No further action identified.	None needed
Religion or Belief	No	No further action identified.	None needed
Sex	No	No further action identified.	None needed
Sexual Orientation	No	No further action identified.	None needed
Marriage or Civil Partnership	No		

No changes made.

Impact Assessment Completed by:
 Jamie Middleton, Head of Mental Health Legislation
 17.1.25

Appendix 2

Review/New Policy Checklist

This checklist to be used as part of the development or review of a policy and presented to the Policy Governance Group (PGG) with the revised policy.

		Tick to confirm
	Engagement	
1.	Is the Executive Lead sighted on the development/review of the policy?	✓
2.	Is the local Policy Champion member sighted on the development/review of the policy?	✓
	Development and Consultation	
3.	If the policy is a new policy, has the development of the policy been approved through the Case for Need approval process?	N/A
4.	Is there evidence of consultation with all relevant services, partners and other relevant bodies?	✓
5.	Has the policy been discussed and agreed by the local governance groups?	✓
6.	Have any relevant recommendations from Internal Audit or other relevant bodies been taken into account in preparing the policy?	✓
	Template Compliance	
7.	Has the version control/storage section been updated?	✓
8.	Is the policy title clear and unambiguous?	✓
9.	Is the policy in Arial font 12?	✓
10.	Have page numbers been inserted?	✓
11.	Has the policy been quality checked for spelling errors, links, accuracy?	✓
	Policy Content	
12.	Is the purpose of the policy clear?	✓
13.	Does the policy comply with requirements of the CQC or other relevant bodies? (where appropriate)	✓
14.	Does the policy reflect changes as a result of lessons identified from incidents, complaints, near misses, etc.?	✓
15.	Where appropriate, does the policy contain a list of definitions of terms used?	✓
16.	Does the policy include any references to other associated policies and key documents?	✓
17.	Has the EIA Form been completed (Appendix 1)?	✓
	Dissemination, Implementation, Review and Audit Compliance	
18.	Does the dissemination plan identify how the policy will be implemented?	✓
19.	Does the dissemination plan include the necessary training/support to ensure compliance?	✓
20.	Is there a plan to i. review ii. audit compliance with the document?	✓
21.	Is the review date identified, and is it appropriate and justifiable?	✓