

London Borough Of Havering

Deprivation of Liberty Policy and Procedure

DoLs Policy and Procedure 2019

Document Control

Sign off and ownership details

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Equality & Health Impact Assessment record

1	Title of activity	<i>DoLS Policy & Procedure</i>		
2	Type of activity	<i>Policy & Procedure review</i>		
3	Scope of activity	This procedure outlines how Havering implements the Mental Capacity Act and Deprivation of Liberty Safeguards (DoLS). This guidance needs to be considered in conjunction with the MCA Code of Practice , the Deprivation of Liberty Safeguards (DoLS) Code of Practice, and the ADASS Guidance . It is important that the MCA and the main Code of Practice are adhered to whenever capacity and best interest's issues, and the DoLS are being considered. The DoLS are in addition to, and do not replace other safeguards in the Act.		
4a	Are you changing, introducing a new, or removing a service, policy, strategy or function?	Yes / No	If the answer to <u>any</u> of these questions is 'YES', please continue to question 5.	If the answer to <u>all</u> of the questions (4a, 4b & 4c) is 'NO', please go to question 6.
4b	Does this activity have the potential to impact (either positively or negatively) upon people (9 protected characteristics)?	Yes / No		
4c	Does the activity have the potential to impact (either positively or negatively) upon any factors which determine people's health and wellbeing?	Yes / No		
5	If you answered YES:	Please complete the EqHIA in Section 2 of this document. Please see Appendix 1 for Guidance.		
6	If you answered NO:	<p><i>Please provide a clear and robust explanation on why your activity does not require an EqHIA. This is essential in case the activity is challenged under the Equality Act 2010.</i></p> <p><i>Please keep this checklist for your audit trail.</i></p>		

Date	Completed by	Review date

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Introduction

The MCA provides a statutory framework for people who lack capacity to make decisions or take actions for themselves, and others may have to make those decisions on their behalf. When they do this, they should not deprive the person who lacks capacity of their liberty, unless it is essential to do so in the person's best interests and for their own safety.

Purpose

This procedure outlines how Havering implements the Mental Capacity Act and Deprivation of Liberty Safeguards (DoLS). This guidance needs to be considered in conjunction with the [MCA Code of Practice](#), the Deprivation of Liberty Safeguards (DoLS) Code of Practice, and the [ADASS Guidance](#). It is important that the MCA and the main Code of Practice are adhered to whenever capacity and best interest's issues, and the DoLS are being considered. The DoLS are in addition to, and do not replace other safeguards in the Act.

See pg. 48. [London Multi-Agency Safeguarding Adults Policy and Procedure](#) for a case study on mental capacity, adult safeguarding and the interface with deprivation of liberty safeguards.

This guidance should be used by professionals who work with adults who may lack capacity to make particular decisions, and is in a situation where the possibility that there may be deprivation of liberty arises.

Policy summary

Who does this procedure apply to?

This procedure applies to:

- People who may lack capacity, regardless of disability, diagnosis, physical appearance to make any specific decision due to an impairment or disorder of the mind or brain whether temporary or permanent.
- Currently detained under a secure order (s.25, Children Act, 1989) who may lack capacity to consent to the arrangements for their care and treatment and who is approaching their 18th birthday.
- Aged 18 and over who may be deprived of their liberty and / or:
- Suffers from a mental disorder (as defined under the Mental Health Act, 1983, 2007)
- Is cared for in a hospital or care home for the purpose of being given care or treatment.
- Lacks the capacity to give informed consent to the arrangements made for their care and/or treatment
- For whom Deprivation of Liberty Safeguards Authorisation is considered, after an independent assessment, to be necessary and the least restrictive option and in their best interests to protect them from harm.
- Is ordinarily resident in London Borough of Havering.

The Deprivation of Liberty Safeguards does not normally apply to people detained under the Mental Health Act 1983. Where a service user is subject to leave under s.17 (MHA, 1983) or a Guardianship Order and is being deprived of their liberty in an alternative setting (such as a general hospital to enable them to receive care or treatment for a physical condition unrelated to their mental disorder) then health professionals may need to consider applying for a DoLS.

Policy

Detail

What amounts to a deprivation of liberty?

The European Court of Human Rights has identified the following as factors contributing the deprivation of liberty in its judgements on cases to date:

- Restraint was used, including sedation, to admit a person who is resisting;

- Professionals exercised complete and effective control over care and movement for a significant period;
- Professionals exercised control over assessments, treatment, contracts and residence;
- The person would be prevented from leaving if they made a meaningful attempt to do so;
- A request by carers for the person to be discharged to their care was refused;
- The person was unable to maintain social contacts because of restrictions placed on access to other people, and
- The person lost autonomy because they were under continuous supervision and control.

Restraint and the ‘least restrictive option’

A person is using restraint if they use force, or threaten to use force, to make someone do something that they are resisting, or restrict a person’s freedom of movement, whether they are resisting or not.

Restraint is appropriate when it is used to prevent harm to the person who lacks capacity and it is a proportionate response to the likelihood and seriousness of harm.

The duration of any restrictions is a relevant factor when considering whether a person is deprived of their liberty. If restraint or restriction is frequent, cumulative, and ongoing, then care providers should consider whether this goes beyond permissible restraint and DoLS Authorisation is required.

Although appropriate restraint may lawfully be used under the MCA, it should be seen as an indicator that a person’s wishes **may** be being over-ridden. In these circumstances the person may be being deprived of their liberty and Authorisation is needed. Restrictions and restraint must be proportionate to the harm the care giver is seeking to prevent.

Multi-agency working

All agencies **MUST** ensure that all those working with adults (aged 16 and over) who may lack capacity are informed and aware of the MCA and DoLS and comply with the LBH MCA and DoLS Policy and Procedures (although DoLS applies only to people aged 18 and over).

All agencies providing care or treatment for adults who may lack capacity must ensure all staff having contact with service users have received training in MCA and DoLS.

DoLS Referral and Contact Information

Contacts and Referral Process

It is the responsibility of all professionals/agencies to refer to the DoLS team if they identify an unauthorised deprivation of liberty.

London Borough of Havering adheres to the ADASS guidance on DoLS referrals.

The request for a standard DoLS application and urgent Authorisation can be sent to:

- **Email:** DoLs@Havering.gov.uk
- **Online form:**
https://www.havering.gov.uk/info/20015/adult_social_care/586/deprivation_of_liberty_safeguards_dols/5
- **Telephone:** 01708 433550

IMCA Services in Havering are provided through Mind in Tower Hamlets and Havering.

DoLS Assessment and Authorisation Process – Hospitals and Care Homes

Assessment Process

Request for Urgent and Standard

- The managing authority applies for a DoL;
- The managing authority can apply for an urgent Authorisation which is valid for 7 days;
- The supervisory authority can then extend an urgent Authorisation for a further 7 days; and
- The supervisory authority should complete the request for standard Authorisation within 21 days.

Screening of Urgent Authorisation and Request for Standard Authorisation

The supervisory authority screens the urgent Authorisation and request for standard Authorisation in line with ADASS guidance and the MCA and associated codes of practice.

If the supervisory authority feels that the managing authority has not completed the referrals in line with relevant statutory legislation and guidance, the supervisory authority can request further information from the managing authority.

Commissioning and Allocation of Assessments

The supervisory authority then commission or allocate 2 assessors to complete 6 assessments.

The DoLS Code of Practice requires 2 assessors to complete the required 6 assessments.

The assessors identified need to meet the requirements as prescribed in the DoLS Code of Practice, particularly in relation to independence to the process e.g. the assessors cannot be allocated to the case and they cannot be line managed by someone involved in the care management of the case.

If required the supervisory authority also refers to the relevant IMCA services. The assessments need to evidence that the DoL is not detrimental to the person, in the person's best interest and that the proposed DoLS are the least restrictive options available.

Mental Health Assessments

The Mental Health Assessor (MHA) completes the following assessments in line with the relevant Codes of Practice:

- Mental Health Assessment – Clinical Evidence of the person's mental health;
- Mental Capacity Assessment – Capacity assessment in relation to the DoLS;
- Eligibility Assessment – That the DoLS are not in conflict with Mental Health legislation; and
- The MHA completes their reports in line with ADASS guidance and forms.

Best Interest Assessments

The Best Interest Assessor (BIA) completes the following assessments in line with the relevant Codes of Practice:

- Age Assessment – evidence that the person is over 18 years old;
- Best Interest Assessment - evidence that the DoLS are in the persons best interest;
- No refusals – the proposed DoLS do not conflict with any other civil legislation e.g. LPA; and
- The BIA completes their reports in line with ADASS guidance and forms.

Equivalent Assessments

The DoLS Code of Practice provides scope and requirements for equivalent assessments to be used.

Equivalent assessments cannot be older than 12 months.

IMCA Referral – 39A IMCA

If there is no relevant person's representative to consult during the Best Interest Assessment process, then the supervisory authority needs to refer for a 39A IMCA. This is done by completing the relevant referral to the IMCA Service.

Authorisation Process **Scrutiny of Assessments**

The BIA and MHA complete the six assessments to evidence that the six DoL requirements have been met in line with the DoLS Code of Practice. Where a 39A IMCA has been appointed, they are required to submit their report as part of the assessment and scrutiny process. The six requirements are as follows:

- Age;
- Mental Health;
- Mental Capacity;
- Eligibility;
- Best Interest; and
- No refusals.

The supervisory authority is required to scrutinise the assessments in line with ADASS guidance. In particular the supervisory authority needs to evidence the following:

- Why the authoriser agrees that a deprivation of liberty is occurring and what evidence has convinced them of this;
- What harm the person would otherwise encounter;
- Why deprivation of liberty is proportionate to that harm; and
- Why are there no less restrictive options available?

If further information is required as a result of the scrutiny process, the supervisory authority can approach the relevant assessors for further clarification.

Authorisation of the DoLS

If the supervisory authority can evidence that the six DoL requirements have been met and have provided the relevant scrutiny in relation to the assessments, then the DoL is granted.

The supervisory authority then completes the relevant form in line with ADASS guidance and grants the request for standard Authorisation.

The supervisory authority will also provide copies of the Authorisation and assessments to all parties involved in the assessment process, including the managing authority, the relevant person's representative and the IMCA if they have been involved in the process.

DoL not granted

If any of the six DoL requirements are not met the assessment process ends and the DoL cannot be authorised. The Supervisory authority need to adhere to the DoLS Code of Practice if a DoL is not granted including informing all relevant parties. The supervisory authority then also completes the relevant forms.

The supervisory authority will also provide copies of the Authorisation and assessments to all parties involved in the assessment process, including the managing authority, the relevant person's representative and the IMCA if they have been involved in the process.

The Supervisory Body must instruct the Managing Authority to review the Person's care plan immediately, so that the unauthorised deprivation of liberty (if already in place) does not continue.

Duration of a DoLS Standard Authorisation

The DoL standard Authorisation can only be granted for a maximum of 12 months. The BIA is responsible for prescribing how long the DoL should be valid for as well as providing reasoning for this.

Conditions Attached to the DoL Standard Authorisation

The BIA can attach conditions to the DoL being granted and the supervisory authority can consider including these conditions, or attach their own conditions in the Authorisation.

Appointing the Relevant Persons Representative (RPR)

Once the DoL has been authorised, the supervisory authority has to appoint a RPR in line with the DoLS code of practice and ADASS guidance. The RPR is nominated by either the person themselves or the BIA. The DoLS Code of Practice defines who can act as the relevant person's representative. This has been further clarified in a recent case law (AJ vs. A Local Authority)¹:

- The RPR has to maintain regular contact with the person;
- represent the relevant person in matters relating to or connected with the Schedule and
- support the relevant person in matters relating to or connected with the deprivation including challenging the deprivation

Paid Relevant Persons Representative (PRPR) – 39D IMCA

Where there is no relevant person's representative, the supervisory authority has to appoint a PRPR. This is done by making the necessary referrals to the IMCA Service.

The PRPR has the same responsibilities as the RPR.

Review

The DoLS Code of Practice prescribes when and how a review is instigated. If it is perceived by the managing authority, the RPR or PRPR that there has been a change in any of the six DoL requirements, then a review of the DoL can be requested. The assessment process is then reinitiated and if necessary referred to the court of protection.

Where the Supervisory Body decides that the best interests requirement should be reviewed solely because details of the conditions attached to the Authorisation need to be changed, and the review request does not include evidence that there is a significant change in the relevant person's overall circumstances, there is no need for a full reassessment of best interests.

In these circumstances, DOL can simply vary the conditions attached to the Authorisation as appropriate. In deciding whether a full re-assessment is necessary, DOL should consider whether the grounds for the Authorisation, or the nature of the conditions, are being contested by anyone as part of the review request.

¹ AJ vs. A Local Authority

[http://www.mentalhealthlaw.co.uk/Re_AJ_\(DOLS\)_2015_EWCOP_5,_2015_MHLO_11](http://www.mentalhealthlaw.co.uk/Re_AJ_(DOLS)_2015_EWCOP_5,_2015_MHLO_11)

The Supervisory Body must record when a review is requested, what it decides to do (whether it decides to carry out a review or not) and the reasons for its decision.

DoL Standard Authorisation ends

The DoL standard Authorisation is limited to a maximum of 12 months.

The Managing Authority must inform the Supervisory Body when the Authorisation terminates early for example the person has moved to another Managing Authority (care home).

When an Authorisation ends, the Managing Authority cannot legally continue to deprive the Person of their liberty.

If the Managing authority considers that deprivation of liberty is still required, they must submit a further standard Authorisation request, effective from when the previous Authorisation ends.

When standard Authorisation ends, the Supervisory Body must inform in writing:

- the Person;
- the Person's representative;
- the Managing Authority, and
- every interested person named by the BIA in their report, as somebody they have consulted during their assessment

Short-term suspension of Authorisation

There are separate review arrangements for cases in which the eligibility requirement ceases to be met for a short period of time for reasons other than that the Person is objecting to receiving mental health treatment in hospital. For example, if the Person is detained as a hospital in-patient under the Mental Health Act 1983, the Managing Authority must notify the Supervisory Body, who will suspend the Authorisation.

If the Person then becomes eligible again within 28 days, the Managing Authority must notify the Supervisory Body who will remove the suspension. If no such notice is given within 28 days, then the Authorisation will be terminated.

If the Person ceases to meet the eligibility requirement because they begin to object to receiving mental health treatment in hospital and they meet the criteria for an application for admission under section two or section three of the Mental Health Act, a review should commence immediately.

Ownership and authorisation

Managing Authorities

Managing authorities have responsibility for applying to the relevant Supervisory Body for Authorisation of a Deprivation of Liberty Safeguards for any person who may come within the scope of the 2005 Mental Capacity Act Deprivation of Liberty Safeguards.

The Managing Authority must:

- Ensure staff are aware of the new legislation;
- Ensure DoLS is considered upon admission process;
- Adapt their care planning processes to incorporate consideration of capacity to consent to the services and whether their actions are likely to result in a deprivation of liberty;
- Issue an urgent Authorisation only in urgent situations;
- Request a standard Authorisation only if deprivation of liberty is genuinely necessary – this should always accompany an urgent request;
- Ensure they comply with any conditions attached to the Authorisation ;

- Obtain Authorisation from the supervisory body in advance of the deprivation of liberty, except in circumstances considered to be so urgent that the deprivation of liberty needs to begin immediately;
- Take all reasonable steps to ensure the person or representative understands what Authorisation means and how they can apply to The Court Of Protection;
- Monitor whether the relevant Person's representative maintains regular contact with the person, and
- Monitor the relevant Persons' circumstances, as any change may require them to request a review.

Supervisory Bodies

Supervisory Bodies must

- Ensure that there are sufficient BIA's are trained to undertake the assessments
- Keep a record of all requests for standard Authorisations that they receive and should acknowledge the receipt of requests from Managing Authorities for standard Authorisations.
- Appoint an IMCA if appropriate.
- Identify appropriate person/s to undertake the six assessments. This will be a Best Interest Assessor (BIA) and a Mental Health Assessor (MHA)
- Record the Authorisation request on LLAS and record the timescales for completion of assessments
- As soon as possible after carrying out their assessments, assessors must keep a written record of the assessment and must give copies of their assessment report(s) to the Supervisory Body. The Supervisory Body must in turn give copies of the assessment report(s) and copies of the Deprivation of Liberty Authorisation or notification that an Authorisation has not be granted to: 1. The Managing Authority, 2. The Person and their representative 3. Any IMCA instructed.
- Maintain an accurate and current record of all Best Interest Assessors (BIAs) and Mental Health Assessors (MHAs)

Community Based DoLS

Where the Deprivation of Liberty is occurring in an environment other than a hospital or care home e.g. supported accommodation, then the Deprivation of Liberty can only be authorized by the court of protection. The Havering Legal Department will need to be involved in the court application process.

The Community DoL application may also include other legal decisions that need to be made including tenancy or management of finances.

The application can be made by the relevant care management team.

If you believe that a person is being deprived of their liberty without proper Authorisation

- Bring it to the attention of the Managing Authority – ask the Managing Authority to apply for a DoLS Authorisation or to change the care regime immediately.
- Contact the London Borough of Havering Adult Safeguarding Team as an unauthorised deprivation could be a form of abuse or harm.

For training

Please contact Adult Social Care Workforce Development Team for:

- Deprivation of Liberty Safeguards training
- Best Interest Assessor Training

Related documents

Background, Legislation and Guidance and New Developments

The Bournemouth Judgment and the European Court of Human Rights

On 5 October 2004, the European Court of Human Rights (ECtHR) announced its judgment in the case of *HL v the United Kingdom*² (commonly referred to as the 'Bournemouth' judgment). HL is a profoundly autistic man with a learning disability, who lacked the capacity to consent to, or to refuse, admission to hospital for treatment. The ECtHR held that he was deprived of his liberty when he was admitted, informally, to Bournemouth Hospital.

The ECHR further held that:

- The manner in which HL was deprived of liberty was not in accordance with 'a procedure prescribed by law' and was, therefore, in breach of Article 5(1) of the European Convention on Human Rights (ECHR); and
- There had been a contravention of Article 5(4) of the ECHR because HL was not able to apply to a court quickly to see if the deprivation of liberty was lawful.

To prevent further similar breaches of the ECHR, the MCA 2005 has been amended to provide additional safeguards for people who lack mental capacity and whose care or treatment necessarily involves a deprivation of liberty within the meaning of Article 5 of the ECHR, but who either are not, or cannot be, detained under the Mental Health Act 1983³.

These safeguards are referred to as '**deprivation of liberty safeguards**'.

Cheshire West [2014] UKSC 19

There are many people in different settings who are deprived of their liberty by virtue of the type of care or treatment that they are receiving, or the level of restrictive practices that they are subject to, but they cannot consent to it because they lack the mental capacity to do so. In March 2014, the Supreme Court handed down judgment in two cases, and that judgment, commonly known as *Cheshire West*⁴, has led to a considerable increase in the numbers of people in England and Wales who are considered to be "deprived" of their liberty for the purposes of receiving care and treatment.

The judgment also emphasised the importance of identifying those who are deprived of their liberty so that their circumstances can be the subject of regular independent checks to ensure that decisions being made about them are actually being made in their best interests.

39 Essex Street⁵ summarises the Judgment as follows:

1. The person objectively deprived of their liberty or is there a risk that cannot be sensibly ignored that they are objectively deprived of their liberty.

There are two key questions to ask - the 'acid test':

- i. Is the person subject to continuous supervision and control?
- ii. Is the person free to leave?

The following factors are no longer valid:

² Bournemouth case [http://www.mentalhealthlaw.co.uk/HL_v_UK_45508/99_\(2004\)_ECHR_471](http://www.mentalhealthlaw.co.uk/HL_v_UK_45508/99_(2004)_ECHR_471)

³ Mental Health Act 1983 <http://www.legislation.gov.uk/ukpga/1983/20/contents>

⁴ Cheshire West Supreme Court Judgment: https://www.supremecourt.uk/decided-cases/docs/UKSC_2012_0068_Judgment.pdf

⁵ Barristers' Chambers publication:

http://www.mentalhealthlaw.co.uk/39_Essex_Chambers_Mental_Capacity_Law_Newsletter

- i. The person's compliance or lack of objection,
 - ii. The relative normality of the placement, and
 - iii. The reason or purpose behind the particular placement.
2. The person lacks capacity to consent to the DoLS.
 3. The care arrangements giving rise to the DoLS are imputable to the state.
 4. If the DoLS is occurring in an environment other than a care home or a hospital, then the deprivation will need to be considered by the Court of Protection (CoP).

16 -18 Year Olds

Children aged 16 + can be deprived of their liberty just as adults but in the ordinary run of events, children cared for at home by their parents without state involvement will not be deprived of their liberty.

D (A Child) [2019] UKSC 42 On appeal from [2017] EWCA Civ 1695 (AKA Re D)

The Supreme Court has held (by a majority) where a 16 or 17 year old lacks capacity to give their own consent to circumstances satisfying the 'acid test' in *Cheshire West*, and if state either knows or ought to know of the circumstances, then the child is to be seen as deprived of their liberty for purposes of Article 5 European Convention of Human Rights, and requires the protections afforded by that Article. That is so whether or not their parent(s) are either seeking to consent to those arrangements if imposed by others or directly implementing them themselves. Therefore all 16+ who lack capacity and whose care and support amounts to a deprivation liberty, it is no longer suitable for this deprivation to be considered within the scope of parental responsibility.

- a. The DoLS regime cannot be used for anyone under 18;
- b. A DoLS Authorisation cannot be used to authorise a deprivation of liberty taking place in a children's home; and
- c. The Court of Protection can authorise the deprivation of a person's liberty from the age of 16.

Relevant legislation, guidance and procedures

- Mental Capacity Act 2005: <http://www.legislation.gov.uk/ukpga/2005/9/contents>
- Mental Health Act 1983: <http://www.legislation.gov.uk/ukpga/1983/20/contents>
- Mental Health Act 2007: <http://www.legislation.gov.uk/ukpga/2007/12/contents>
- Mental Capacity Act 2005 Code of Practice: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/497253/Mental-capacity-act-code-of-practice.pdf
- Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008: <http://www.legislation.gov.uk/ukdsi/2008/9780110814773/contents>
- Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) Regulations 2008: <http://www.legislation.gov.uk/uksi/2008/1315/contents/made>
- ADASS Guidance on DoLS: <https://www.adass.org.uk/deprivation-of-liberty-safeguards-guidance/>

New Developments

It is important to keep up to date with case law and legal updates in relation to the MCA and DoLS. The present system is being replaced by Liberty Protection Safeguards. There is an ever growing body of case law that the relevant practitioners need to keep abreast of to ensure that they are adhering to the current legal frameworks and guidance.

Monitoring and review

This guidance will be monitored on a quarterly basis by Safeguarding Service Manager. The next scheduled review of this guidance is October 2020 and then will be reviewed every three years.

Further information

Definitions

1. Managing Authority

The hospital or care home that is likely to be subjecting a patient or resident to a DoLS in terms of breaching their human rights (*Human Rights Act 1988 – Article 5 Right to Liberty*).

The managing authority applies to the supervisory authority for an Authorisation the DoLS that is taking place.

2. Supervisory authority

The London Borough of Havering (LBH) is the supervisory authority for all LBH and Havering Clinical Commissioning Group (CCG) funded residents. LBH can only authorise DoLS for people who are in hospitals or care homes.

3. Lacking Capacity

A person lacks capacity in relation to a matter if he or she is unable to make a decision for himself or herself in relation to the matter because of an impairment (permanent or temporary) of, or a disturbance in the functioning of, the mind or brain: sections 1 and 2, MCA 2005 (MCA 2005).

Persons who lack capacity may be subject to deprivation of liberty, but only by Authorisation under Schedule A1 of the MCA 2005 or by order of the Court of Protection (section 4A).

4. Deprivation of Liberty

A DoL is likely to occur when the person involved lacks capacity in relation to the DoL and the Cheshire West 'Acid Test' is met i.e. lacks capacity and is under constant supervision, control and not free to leave.

5. Deprivation of Liberty – Community or Domestic Settings

The Court of Protection may make a similar order authorising DoL in a domestic setting (outside hospitals and care homes) in relation to personal welfare. This will include a placement in a supported living arrangement.

6. DoLS – Best Interest Assessor (BIA)

A practitioner qualified to carry out BIA DoL assessments. The BIA completes the age assessment, best interest assessment and the no refusals assessment.

7. DoLS – Mental Health Assessor

A qualified Mental Health practitioner, including a section 12 doctor. The Mental Health assessor completes the mental health assessment, mental capacity assessment and the eligibility assessment.

8. Independent Mental Capacity Advocate (IMCA)

In relation to the DoLS process an IMCA is generally required at 2 stages of the process. An IMCA needs to be involved when there is no one else to consult during the Best Interest Assessment

process (39A IMCA)⁶ and also when there is no one appropriate to appoint as the relevant persons representative (39D IMCA)⁷

9. Relevant persons Representative (RPR) and Paid RPR

Once a DoL is authorised the relevant person's representative is responsible for monitoring the DoL that is taking place including the conditions that have been attached to the DoL Authorisation. If there is no one appropriate to be appointed as the RPR, then the supervisory authority appoints an IMCA who acts as the paid RPR.

10. Cheshire West – Acid Test

To identify whether a DoL is occurring the Cheshire West ruling prescribes an 'Acid Test' namely, the person is deemed as lacking capacity, under constant supervision, control and not free to leave.

⁶ Mental Capacity Act Deprivation of Liberty Safeguards: Section 39A - <http://www.scie.org.uk/publications/guides/guide41/39a.asp>

⁷ Mental Capacity Act Deprivation of Liberty Safeguards: Section 39D <http://www.scie.org.uk/publications/guides/guide41/39d.asp>

Equality & Health Impact Assessment (EqHIA)

Document control

Title of activity:	<i>Deprivation of Liberty Safeguards</i>
Lead officer:	<i>Lurleen Trumpet, Safeguarding Service Manager, ASC Safeguarding Team, Adults Service Directorate</i>
Approved by:	<i>Barbara Nicholls, Director – Adults Services</i>
Date completed:	<i>15/11/2020</i>
Scheduled date for review:	<i>TBC</i>

Please note that the Corporate Policy & Diversity and Public Health teams require at least **5 working days** to provide advice on EqHIAs.

Did you seek advice from the Corporate Policy & Diversity team?	Yes / No
Did you seek advice from the Public Health team?	Yes / No
Does the EqHIA contain any confidential or exempt information that would prevent you publishing it on the Council's website?	Yes / No

Please note that EqHIAs are **public** documents and must be made available on the Council's [EqHIA webpage](#).

Please submit the completed form via e-mail to EqHIA@havering.gov.uk thank you.

1. Equality & Health Impact Assessment Checklist

Please complete the following checklist to determine whether or not you will need to complete an EqHIA and ensure you keep this section for your audit trail. If you have any questions, please contact EqHIA@havering.gov.uk for advice from either the Corporate Diversity or Public Health teams. Please refer to the Guidance in Appendix 1 on how to complete this form.

About your activity

1	Title of activity	<i>Deprivation of Liberty Standards</i>		
2	Type of activity	<i>Policy & Procedure</i>		
3	Scope of activity	<i>To comprehensively outline how Havering Adults Social Care Services implements the Deprivation of Liberty Safeguards to ensure the legalities and statutory responsibilities within the DoLS and associated legislation are embedded in practice; and provide professional guidance for those working with adults who may lack capacity to make particular decisions and are in a situation where a potential deprivation of liberty arises to achieve the best outcomes for the Client.</i>		
4a	Are you changing, introducing a new, or removing a service, policy, strategy or function?	Yes	If the answer to <u>any</u> of these questions is 'YES', please continue to question 5.	If the answer to <u>all</u> of the questions (4a, 4b & 4c) is 'NO', please go to question 6.
4b	Does this activity have the potential to impact (either positively or negatively) upon people (9 protected characteristics)?	No		
4c	Does the activity have the potential to impact (either positively or negatively) upon any factors which determine people's health and wellbeing?	No		
5	If you answered YES:	Please complete the EqHIA in Section 2 of this document. Please see Appendix 1 for Guidance.		

Completed by:	<i>Lurleen Trumpet, Safeguarding Service Manager, ASC Safeguarding Team, Adults Service Directorate</i>
Date:	<i>TBC</i>

2. The EqHIA – How will the strategy, policy, plan, procedure and/or service impact on people?

Background/context:

The Mental Capacity Act provides a statutory framework for people who lack capacity to make decisions or take actions for themselves, and others may have to make those decisions on their behalf. When they do this, they should not deprive the person who lacks capacity of their liberty, unless it is essential to do so in the person's best interests and for their own safety.

This procedure outlines how Havering implements the Mental Capacity Act and Deprivation of Liberty Safeguards (DoLS).

The Havering Adults Social Care have reviewed the policy and made revisions to strengthen and clarify the standards of practice and expectations to help ensure the Deprivation of Liberty Safeguards and associated legislation are adhered to and correctly implemented. It aims to ensure that Clients who have impaired capacity and who are deprived of liberty are empowered and protected.

All those making decisions on behalf of someone who lacks capacity and who are depriving an adult of their liberty will have to do this in line with legislation. Therefore, all professionals who work directly with such persons are legally required to have regard to this Policy.

**Expand box as required*

Who will be affected by the activity?

People who lack capacity to make decisions or take actions for themselves, regardless of disability, diagnosis, physical appearance to make any specific decision due to an impairment or disorder of the mind or brain whether temporary or permanent who are either:

- An Adult aged 18 and over whose care and support needs amount to or likely to amount to a deprivation of liberty.
 - Suffers from a mental disorder (as defined under the Mental Health Act, 1983, 2007)
 - Is cared for in a hospital or care home for the purpose of being given care or treatment.
 - Lacks the capacity to give informed consent to the arrangements made for their care and/or treatment
 - For whom Deprivation of Liberty Safeguards Authorisation is considered, after an independent assessment, to be necessary and the least restrictive option and in their best interests to protect them from harm.
 - Is ordinarily resident of London Borough of Havering.

Others who may have to make any specific decisions on behalf of a person who lacks capacity as stated above.

**Expand box as required*

Protected Characteristic - Age: Consider the full range of age groups

<i>Please tick (✓) the relevant box:</i>		<p>Overall impact:</p> <p>This policy impacts the following age groups:</p> <p>People over 18 who may be deprived of their liberty and/or:</p> <ul style="list-style-type: none"> - Is cared for in a hospital or care home for the purpose of being given care or treatment. - Lacks the capacity to give informed consent to the arrangements made for their care and/or treatment - For whom Deprivation of Liberty Safeguards Authorisation is considered, after an independent assessment, to be necessary and the least restrictive option and in their best interests to protect them from harm. - Is ordinarily resident of London Borough of Havering. <p>However, people aged 65 and over are more likely to be applicable to meet the 'acid test' for DoLS and the subject of a DoLS referral.</p>
Positive	✓	
Neutral		
Negative		
<p>Evidence:</p> <p>Best Interest Assessors and Mental Health Assessors complete the six assessments to ensure and evidence that the six DoLS requirements have been met in line with the Codes of Practice to ensure the appropriate safeguarding measures are implemented.</p>		
<p>Sources used:</p> <p>Mental Capacity Act MCA Code of Practice Deprivation of Liberty Safeguards Code of Practice ADASS Guidance</p>		

Protected Characteristic - Disability: Consider the full range of disabilities; including physical mental, sensory and progressive conditions		
<i>Please tick (✓) the relevant box:</i>		<p>Overall impact:</p> <p>The policy supports the safeguarding of residents who lack or may lack capacity to consent to their care and support needs. This is more likely to be applicable to adults with a disability This includes (but is not exclusive) adults with a Learning Disability, Mental illness, Brain injury, Stroke, Dementia and Alzheimer's</p>
Positive	✓	
Neutral		
Negative		

<p>Evidence:</p> <p>Best Interest Assessors and Mental Health Assessors complete six assessments to ensure and evidence that the six DoLS requirements have been met in line with the Codes of Practice to ensure the appropriate safeguarding measures are implemented.</p>
<p>Sources used:</p> <p>Mental Capacity Act MCA Code of Practice Deprivation of Liberty Safeguards Code of Practice ADASS Guidance</p>

Protected Characteristic - Sex/gender: Consider both men and women

<i>Please tick (✓) the relevant box:</i>		<p>Overall impact:</p> <p>The policy is unlikely to impact on any citizen because of their sex/gender.</p>
Positive	<input type="checkbox"/>	
Neutral	<input checked="" type="checkbox"/>	
Negative	<input type="checkbox"/>	

Evidence:

The policy does not have any specific impact due to sexes/genders.

Sources used:

Mental Capacity Act
MCA Code of Practice
Deprivation of Liberty Safeguards Code of Practice
ADASS Guidance

Protected Characteristic - Ethnicity/race: Consider the impact on different ethnic groups and nationalities

<i>Please tick (✓) the relevant box:</i>		<p>Overall impact:</p> <p>The policy is unlikely to impact on any citizen because of their ethnicity/race.</p>
Positive	<input type="checkbox"/>	
Neutral	<input checked="" type="checkbox"/>	
Negative	<input type="checkbox"/>	

<p>Evidence:</p> <p>The policy does not have any specific impact due to ethnicity/race.</p>
<p>Sources used:</p> <p>Mental Capacity Act MCA Code of Practice Deprivation of Liberty Safeguards Code of Practice ADASS Guidance</p>

<p>Protected Characteristic - Religion/faith: Consider people from different religions or beliefs including those with no religion or belief</p>							
<p><i>Please tick (✓) the relevant box:</i></p> <table border="1"> <tr> <td>Positive</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Neutral</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Negative</td> <td><input type="checkbox"/></td> </tr> </table>	Positive	<input type="checkbox"/>	Neutral	<input checked="" type="checkbox"/>	Negative	<input type="checkbox"/>	<p>Overall impact:</p> <p>The changes to the policy are unlikely to impact on any citizen because of their religion/faith.</p>
Positive	<input type="checkbox"/>						
Neutral	<input checked="" type="checkbox"/>						
Negative	<input type="checkbox"/>						
<p>Evidence:</p> <p>The policy does not have any specific impact due to religion/faith.</p>							
<p>Sources used:</p> <p>Mental Capacity Act MCA Code of Practice Deprivation of Liberty Safeguards Code of Practice ADASS Guidance</p>							

<p>Protected Characteristic - Sexual orientation: Consider people who are heterosexual, lesbian, gay or bisexual</p>							
<p><i>Please tick (✓) the relevant box:</i></p> <table border="1"> <tr> <td>Positive</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Neutral</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Negative</td> <td><input type="checkbox"/></td> </tr> </table>	Positive	<input type="checkbox"/>	Neutral	<input checked="" type="checkbox"/>	Negative	<input type="checkbox"/>	<p>Overall impact:</p> <p>The changes to the policy are unlikely to impact on any citizen because of their sexual orientation.</p>
Positive	<input type="checkbox"/>						
Neutral	<input checked="" type="checkbox"/>						
Negative	<input type="checkbox"/>						

<p>Evidence:</p> <p>The policy does not have any specific impact due to sexual orientation.</p>
<p>Sources used:</p> <p>Mental Capacity Act MCA Code of Practice Deprivation of Liberty Safeguards Code of Practice ADASS Guidance</p>

<p>Protected Characteristic - Gender reassignment: Consider people who are seeking, undergoing or have received gender reassignment surgery, as well as people whose gender identity is different from their gender at birth</p>		
<p><i>Please tick (✓) the relevant box:</i></p>		<p>Overall impact:</p> <p>The changes to the policy are unlikely to impact on any citizen because of gender reassignment.</p>
<p>Positive</p>	<input type="checkbox"/>	
<p>Neutral</p>	<input checked="" type="checkbox"/>	
<p>Negative</p>	<input type="checkbox"/>	
<p>Evidence:</p> <p>The policy does not have any specific impact due to gender reassignment.</p>		
<p>Sources used:</p> <p>Mental Capacity Act MCA Code of Practice Deprivation of Liberty Safeguards Code of Practice ADASS Guidance</p>		
<p>Protected Characteristic - Marriage/civil partnership: Consider people in a marriage or civil partnership</p>		
<p><i>Please tick (✓) the relevant box:</i></p>		<p>Overall impact:</p> <p>The changes to the policy are unlikely to impact on any citizen because of their marriage/civil partnership status.</p>
<p>Positive</p>	<input type="checkbox"/>	
<p>Neutral</p>	<input checked="" type="checkbox"/>	
<p>Negative</p>	<input type="checkbox"/>	

Evidence:

The policy does not have any specific impact due to marriage/civil partnership status.

Sources used:
Mental Capacity Act
MCA Code of Practice
Deprivation of Liberty Safeguards Code of Practice
ADASS Guidance

Protected Characteristic - Pregnancy, maternity and paternity: Consider those who are pregnant and those who are undertaking maternity or paternity leave

<i>Please tick (✓) the relevant box:</i>		Overall impact: This policy is unlikely to impact on any citizen because of pregnancy, maternity and paternity status.
Positive	<input type="checkbox"/>	
Neutral	<input checked="" type="checkbox"/>	
Negative	<input type="checkbox"/>	

Evidence:

The policy does not have specific impact due to pregnancy, maternity and paternity status.

Sources used:
Mental Capacity Act
MCA Code of Practice
Deprivation of Liberty Safeguards Code of Practice
ADASS Guidance

Socio-economic status: Consider those who are from low income or financially excluded backgrounds

<i>Please tick (✓) the relevant box:</i>		Overall impact: This policy is unlikely to impact on any citizen because of their socio-economic status.
Positive	<input type="checkbox"/>	
Neutral	<input checked="" type="checkbox"/>	
Negative	<input type="checkbox"/>	

<p>Evidence:</p> <p>The policy does not have specific impact due to socio-economic status.</p>
<p>Sources used:</p> <p>Mental Capacity Act MCA Code of Practice Deprivation of Liberty Safeguards Code of Practice ADASS Guidance</p>

Health & Wellbeing Impact: Consider both short and long-term impacts of the activity on a person’s physical and mental health, particularly for disadvantaged, vulnerable or at-risk groups. Can health and wellbeing be positively promoted through this activity? Please use the Health and Wellbeing Impact Tool in Appendix 2 to help you answer this question.

<i>Please tick (✓) all the relevant boxes that apply:</i>		<p>Overall impact:</p> <p>Do you consider that a more in-depth HIA is required as a result of this brief assessment? Please tick (✓) the relevant box</p> <p style="text-align: right;">Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>
Positive	✓	
Neutral		
Negative		




<p>Evidence:</p> <p>This policy may have a positive impact on an individual’s health and wellbeing, as it allows an individual to gain support with making decisions in their best interests which may impact on improving their lifestyle choices, personal circumstances, social circumstances, economic circumstances and access to available services to help improve their health and wellbeing (such as, leisure and recreation services).</p>

<p>Sources used:</p> <p>Mental Capacity Act MCA Code of Practice Deprivation of Liberty Safeguards Code of Practice ADASS Guidance Appendix 2 – Health and Wellbeing Impact Tool</p>
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3. Outcome of the Assessment

The EqHIA assessment is intended to be used as an improvement tool to make sure the activity maximises the positive impacts and eliminates or minimises the negative impacts. The possible outcomes of the assessment are listed below and what the next steps to take are:

Please tick (✓) what the overall outcome of your assessment was:

	1. The EqHIA identified <u>no significant concerns</u> OR the identified <u>negative concerns</u> have already been <u>addressed</u>		Proceed with implementation of your activity
✓	2. The EqHIA identified some <u>negative impact</u> which still needs <u>to be addressed</u>		COMPLETE SECTION 4: Complete action plan and finalise the EqHIA
	3. The EqHIA identified some <u>major concerns</u> and showed that it is <u>impossible to diminish negative impacts</u> from the activity to an acceptable or even lawful level		Stop and remove the activity or revise the activity thoroughly. Complete an EqHIA on the revised proposal.

4. Action Plan

The real value of completing an EqHIA comes from the identifying the actions that can be taken to eliminate/minimise negative impacts and enhance/optimize positive impacts. In this section you should list the specific actions that set out how you will address any negative equality and health & wellbeing impacts you have identified in this assessment. Please ensure that your action plan is: more than just a list of proposals and good intentions; sets ambitious yet achievable outcomes and timescales; and is clear about resource implications.

Protected characteristic / health & wellbeing impact	Identified Negative or Positive impact	Recommended actions to mitigate Negative impact* or further promote Positive impact	Outcomes and monitoring**	Timescale	Lead officer
Age	Positive	Not Applicable	Periodic Policy Reviews	Annually	Lurleen Trumpet
Disability	Positive	Not Applicable	Periodic Policy Reviews	Annually	Lurleen Trumpet
Health & Wellbeing	Positive	Not Applicable	Periodic Policy Reviews	Annually	Lurleen Trumpet

Add further rows as necessary

* You should include details of any future consultations and any actions to be undertaken to mitigate negative impacts

** Monitoring: You should state how the impact (positive or negative) will be monitored; what outcome measures will be used; the known (or likely) data source for outcome measurements; how regularly it will be monitored; and who will be monitoring it (if this is different from the lead officer).

5. Review

In this section you should identify how frequently the EqHIA will be reviewed; the date for next review; and who will be reviewing it.

Review:

To be reviewed a minimum of every three years.

Scheduled date of review: November 2023

Lead Officer conducting the review: Lurleen Trumpet, Safeguarding Service Manager, Adults Services

**Expand box as required*

Appendix 2. Health & Wellbeing Impact Tool

Will the activity/service/policy/procedure affect any of the following characteristics? Please tick/check the boxes below

The following are a range of considerations that might help you to complete the assessment.

Lifestyle YES <input type="checkbox"/> NO <input type="checkbox"/>	Personal circumstances YES <input type="checkbox"/> NO <input type="checkbox"/>	Access to services/facilities/amenities YES <input type="checkbox"/> NO <input type="checkbox"/>
<input type="checkbox"/> Diet <input type="checkbox"/> Exercise and physical activity <input type="checkbox"/> Smoking <input type="checkbox"/> Exposure to passive smoking <input type="checkbox"/> Alcohol intake <input type="checkbox"/> Dependency on prescription drugs <input type="checkbox"/> Illicit drug and substance use <input type="checkbox"/> Risky Sexual behaviour <input type="checkbox"/> Other health-related behaviours, such as tooth-brushing, bathing, and wound care	<input type="checkbox"/> Structure and cohesion of family unit <input type="checkbox"/> Parenting <input type="checkbox"/> Childhood development <input type="checkbox"/> Life skills <input type="checkbox"/> Personal safety <input type="checkbox"/> Employment status <input type="checkbox"/> Working conditions <input type="checkbox"/> Level of income, including benefits <input type="checkbox"/> Level of disposable income <input type="checkbox"/> Housing tenure <input type="checkbox"/> Housing conditions <input type="checkbox"/> Educational attainment <input type="checkbox"/> Skills levels including literacy and numeracy	<input type="checkbox"/> to Employment opportunities <input type="checkbox"/> to Workplaces <input type="checkbox"/> to Housing <input type="checkbox"/> to Shops (to supply basic needs) <input type="checkbox"/> to Community facilities <input type="checkbox"/> to Public transport <input type="checkbox"/> to Education <input type="checkbox"/> to Training and skills development <input type="checkbox"/> to Healthcare <input type="checkbox"/> to Social services <input type="checkbox"/> to Childcare <input type="checkbox"/> to Respite care <input type="checkbox"/> to Leisure and recreation services and facilities
Social Factors YES <input type="checkbox"/> NO <input type="checkbox"/>	Economic Factors YES <input type="checkbox"/> NO <input type="checkbox"/>	Environmental Factors YES <input type="checkbox"/> NO <input type="checkbox"/>
<input type="checkbox"/> Social contact <input type="checkbox"/> Social support <input type="checkbox"/> Neighbourliness <input type="checkbox"/> Participation in the community <input type="checkbox"/> Membership of community groups <input type="checkbox"/> Reputation of community/area <input type="checkbox"/> Participation in public affairs <input type="checkbox"/> Level of crime and disorder <input type="checkbox"/> Fear of crime and disorder <input type="checkbox"/> Level of antisocial behaviour <input type="checkbox"/> Fear of antisocial behaviour <input type="checkbox"/> Discrimination <input type="checkbox"/> Fear of discrimination <input type="checkbox"/> Public safety measures <input type="checkbox"/> Road safety measures	<input type="checkbox"/> Creation of wealth <input type="checkbox"/> Distribution of wealth <input type="checkbox"/> Retention of wealth in local area/economy <input type="checkbox"/> Distribution of income <input type="checkbox"/> Business activity <input type="checkbox"/> Job creation <input type="checkbox"/> Availability of employment opportunities <input type="checkbox"/> Quality of employment opportunities <input type="checkbox"/> Availability of education opportunities <input type="checkbox"/> Quality of education opportunities <input type="checkbox"/> Availability of training and skills development opportunities <input type="checkbox"/> Quality of training and skills development opportunities <input type="checkbox"/> Technological development <input type="checkbox"/> Amount of traffic congestion	<input type="checkbox"/> Air quality <input type="checkbox"/> Water quality <input type="checkbox"/> Soil quality/Level of contamination/Odour <input type="checkbox"/> Noise levels <input type="checkbox"/> Vibration <input type="checkbox"/> Hazards <input type="checkbox"/> Land use <input type="checkbox"/> Natural habitats <input type="checkbox"/> Biodiversity <input type="checkbox"/> Landscape, including green and open spaces <input type="checkbox"/> Townscape, including civic areas and public realm <input type="checkbox"/> Use/consumption of natural resources <input type="checkbox"/> Energy use: CO2/other greenhouse gas emissions <input type="checkbox"/> Solid waste management <input type="checkbox"/> Public transport infrastructure